

No. 3073

United States
Circuit Court of Appeals
For the Ninth Circuit.

Apostles on Appeals.
(IN TWO VOLUMES.)

CHARLES P. DOE, Claimant of the Steamship
"GEORGE W. ELDER," Her Engines, etc.,
Appellant,

vs.

COLUMBIA CONTRACT COMPANY, a Corpora-
tion, and UNITED STATES FIDELITY
and GUARANTY COMPANY, Stipulators,
Appellees.

VOLUME I.
(Pages 1 to 320, Inclusive.)

Upon Appeal from the United States District Court for the
District of Oregon.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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The Steamship "GEORGE W. ELDER," Her
Machinery, Tackle, Apparel and Furniture.

COLUMBIA CONTRACT COMPANY,

Libellant and Appellee.

CHARLES P. DOE,

Claimant and Appellant.

Names and Addresses of the Attorneys of Record.

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For the Appellee.

*In the District Court of the United States for the
District of Oregon.*

The Steamship "GEORGE W. ELDER," Her
Machinery, Tackle, Apparel and Furniture.

COLUMBIA CONTRACT COMPANY,

Libellant.

CHARLES P. DOE,

Claimant.

**Statement of Clerk Under Section 1 of Admiralty
Rule 4.**

BE IT REMEMBERED that on the 31st day of August, 1909, there was duly filed in the District Court of the United States for the District of Oregon a libel by the Columbia Contract Company as libelant against the steamship "George W. Elder," her machinery, tackle, apparel and furniture and that on said 31st day of August, 1909, said libelant filed in said court a stipulation for costs in the sum of \$250.00 with H. B. Dickson as surety thereon. Thereupon a warrant of arrest and monition was duly issued out of said court, and on said date the United States Marshal for the District of Oregon duly arrested the said steamship "George W. Elder."

That on said 31st day of August, 1909, there was filed in said court a claim of owner by Charles P. Doe, claiming to be the sole and *bona fide* owner of said steamship, and that no other person is the owner thereof. And on said date said claimant filed in said cause a stipulation for costs in the sum of \$250.00, with Harry Young as surety thereon. On September 1, 1909, said claimant delivered to the United States Marshal a stipulation to abide by [1*] and pay the decree in the sum of \$25,000.00, with the United States Fidelity and Guaranty Company of Maryland as surety thereon, which stipulation was duly approved by the Honorable Robert S. Bean, District Judge, and was duly filed in said court on said date, and thereupon the said United States

*Page-number appearing at foot of page of original certified Apostles on Appeal.

Marshal delivered the said steamship to the said claimant.

On October 1, 1909, said claimant duly filed in said cause his answer. Thereafter on the 5th day of February, 1912, the said cause came on for trial upon the question of liability before the Honorable Charles E. Wolverton, United States District Judge for the District of Oregon, the libelant appearing by Mr. C. E. S. Wood and Mr. Ira Campbell, its proctors, and the claimant appearing by Mr. William Denman, his proctor, and said trial was continued to and testimony therein taken on the 6th, 7th and 8th days of February, 1912; and thereupon said cause was continued for argument to a date to be thereafter set.

Thereafter on the 3d day of February, 1913, the court entered a finding and decree that the steamship "George W. Elder" was at fault and responsible to the libelant for whatsoever damage the libelant had sustained, the amount of said damage to be thereafter ascertained; and on said 3d day of February, 1913, there was filed in said court an opinion by the Honorable Charles E. Wolverton, District Judge.

Thereafter on the 28th day of February, 1913, said libelant filed in said cause its cost bill and [2] costs thereon were taxed at the sum of \$133.68 in favor of said libelant and against the said claimant.

Thereafter on the 1st day of April, 1916, by order of Honorable Charles E. Wolverton, District Judge, Mr. A. M. Cannon was appointed Special Master to take the testimony upon the question of the amount of damages. Thereafter on the 5th day of October,

1916, said Special Master filed in said cause his findings and report as to the amount of damages in which he found that libelant was entitled to recover from the respondent the sum of \$41,839.83 damages and demurrage together with interest thereon at the rate of six per cent per annum from the 1st day of May, 1910, the date of the completion of repairs, until paid.

Thereafter on the 11th day of December, 1916, upon motion duly filed by said libelant on December 5, 1916, an order was made confirming the said report of the Special Master, and a further order allowing the libelant to amend its libel to conform to the amount of damages found by the Referee, a copy of which order is included in the Apostles hereto annexed.

Thereafter on the 28th day of December, 1916, said libelant filed in said cause an amended libel, and thereafter on the 28th day of December, 1916, there was entered in said cause the final decree giving the said libelant judgment for the sum of \$25,000.00 against the said Charles P. Doe, claimant, and the United States Fidelity and Guaranty Company, stipulator upon the [3] stipulation of said claimant to abide by and pay the decree, and further giving said libelant judgment against the said Charles P. Doe, claimant, for interest at the rate of 6% per annum upon the said sum of \$25,000.00 from the 1st day of May, 1910, until the date of this decree, to wit: \$9,991.65; and further giving judgment in favor of the said libelant in the sum of \$250.00, being a portion of libelant's costs and disbursements,

against said Charles P. Doe, claimant and Harry Young, surety upon the said claimant's stipulation for costs; and further giving said libelant judgment against the said claimant Charles P. Doe in the sum of \$325.63, being the balance of libelant's costs and disbursements. And it was further decreed that this decree bear interest from its date at the rate of 6% per annum.

Afterwards on June 21, 1917, said libelant filed in said cause its cost bill and costs thereon were taxed in the sum of \$441.95 in favor of the said libelant. Thereafter on the 21st day of June, 1917, said claimant filed in said cause a notice of appeal, and by order of said Court duly entered on June 21, 1917, the amount of the supersedeas bond to be given on appeal by said claimant was fixed in the sum of

G. H. M. \$40,000.00.

~~\$36,000.00.~~ Thereafter on August 9, 1917, said claimant filed in said cause a bond on appeal, with the Fidelity and Deposit Company of Maryland as surety thereon, by which the claimant and surtey acknowledge themselves bound in the sum of \$250.00 to answer for any costs which may be awarded against them and in the sum of \$40,000.00 to abide by and pay any decree of damages which may be awarded against them.

Thereafter on the 12th day of October, 1917, said claimant filed in said cause an assignment of errors.

[4]

By an order dated August 16, 1917, duly signed by the Honorable Charles E. Wolverton, District Judge, the time within which said claimant is required to file

the Apostles on Appeal and docket the same in the United States Circuit Court of Appeals for the Ninth Circuit was extended to and including November 1, 1917.

Afterwards, on October 12, 1917, by an order duly entered therein, the clerk was directed to transmit to the United States Circuit Court of Appeals for the Ninth Circuit, with the Apostles on Appeal in this case, all of the original exhibits.

G. H. MARSH,
Clerk. [5]

*In the District Court of the United States for the
District of Oregon.*

July Term, 1909.

BE IT REMEMBERED, That on the 31st day of August, 1909, there was duly filed in the District Court of the United States for the District of Oregon, a Libel, in words and figures as follows, to wit: [6]

*In the District Court of the United States for the
District of Oregon.*

The Steamship "GEORGE W. ELDER," Her Machinery, Tackle, Apparel, and Furniture.
COLUMBIA CONTRACT CO.,

Libellant.

Libel.

To the Honorable Judges of the District Court of the
United States for the District of Oregon:
Columbia Contract Co., a corporation organized

and existing under and by virtue of the laws of the State of Oregon, presents this its libel against the steamship "George W. Elder," her machinery, tackle, apparel, and furniture, whereof G. M. Jessen is or lately was master and C. P. Doe and J. H. Peterson are or lately were owners, and against all persons intervening for their interests in said vessel in a cause of collision, civil and maritime, and thereupon your orator articulately propounds and alleges as follows:

I.

At all of the times in this libel set forth libelant was and is a corporation duly organized and existing under and by virtue of the laws of the State of Oregon and at all of such times was and still is the owner of a certain screw steamship known as the "Daniel Kern," which vessel was, prior to the 18th day of August, 1909, employed by libelant in the towage of barges to and from Ft. Stevens, Oregon, and points upon the Columbia River above Ft. Stevens.

II.

The "George W. Elder" is a screw steam vessel flying the American flag and plying regularly between Portland, [7] Oregon, and Eureka, San Francisco and San Pedro, California. Her master is or lately was G. M. Jessen, and C. P. Doe, and J. H. Peterson are or lately were her owners and said vessel is now lying in the port of Portland, Oregon, within the District of Oregon, and is within and subject to the jurisdiction of this Honorable Court.

III.

Heretofore and about one o'clock in the morning of

August 18, 1909, the "Daniel Kern" was a vessel under way in the waters of the Columbia River about abreast of Waterford, Washington, and was engaged in making fast to three loaded rock barges, also belonging to libellant, preparatory to towing them from such point to Ft. Stevens, Oregon. Said vessel was in good order and condition and was well and sufficiently manned and equipped with a full and competent set of officers and crew, and said vessel had burning and was displaying the regulation lights, to wit, her port sidelight colored red, her starboard sidelight colored green, both fitted with regulation screen and burning in the proper place; her masthead light and lights also upon her foremast indicating that she had a tow, and a white light astern burning in the accustomed place. The "Daniel Kern" engines were stopped at the time and she was making fast to her tow having a head-line running at the time to the barge forming the port barge of her tow. The "Daniel Kern" was headed down the Columbia River and the barges were headed substantially at right angles to her upon her port bow and towards the Oregon shore of the Columbia River. The "George W. Elder" left Portland, Oregon, upon her regular voyage from Portland to California ports as aforesaid the evening of August 17, 1909, and when descending the Columbia River upon such voyage and in the vicinity of Waterford Light sighted the "Daniel Kern" ahead of herself and down the [8] Columbia River. Neither of the sidelights of "Daniel Kern" were visible to those in charge of the navigation of the "Elder" and the "Daniel Kern" was in

such position as that her sidelights could not be so visible. The "George W. Elder" blew one short blast of her steam whistle as a signal of her desire to overtake and pass the "Daniel Kern" on the right or starboard hand of the "Daniel Kern." To such blast of the "George W. Elder" the "Daniel Kern" replied with four short and rapid blasts of her own steam whistle, the danger signal, indicating that the "Daniel Kern," by reason of the fact that she did not have her tow under control, did not think it safe for the "George W. Elder," the vessel astern, to attempt to pass at that point. To the four short and rapid blasts of the steam whistle of the "Daniel Kern," the "George W. Elder" again blew one short blast, to which the "Daniel Kern" again replied with four short and rapid blasts of her own steam whistle, and almost immediately thereafter the "George W. Elder" came into collision with the "Daniel Kern," striking her upon the starboard quarter aft and inflicting such damage upon the "Daniel Kern" as that within twenty minutes thereafter she sank in the waters of the Columbia River and now lies upon the bottom of the Columbia River.

IV.

The libelant avers that said collision was occasioned solely through negligence and carelessness of those in charge of the navigation of the "George W. Elder," in that she did not keep out of the way of the "Daniel Kern" and attempted to pass the "Daniel Kern" from astern without receiving the assent of the "Daniel Kern" indicated by the appropriate whistle so to do and attempted so to pass when the

“Daniel Kern” had blown four short and rapid blasts of her steam whistle, indicating that it was not safe for the “George W. Elder” to [9] attempt to pass at that point; and libelant further avers that no act of the “Daniel Kern,” her master, pilot, officers or crew in any respect whatever contributed to said collision.

V.

By reason of said collision so occasioned by the negligence and carelessness of those in charge of the “George W. Elder,” libelant, as owner of the “Daniel Kern,” has sustained damages in and about the raising and repairs of said vessel, and loss of equipment upon said vessel, and loss of the use of said vessel, in an amount not at present ascertainable with particularity. Libelant believes that said losses will aggregate or may aggregate the sum of twenty-five thousand dollars (\$25,000) and for said losses and in the sum of twenty-five thousand dollars (\$25,000) it has and claims a lien upon the “George W. Elder,” and also claims against her owners personally.

VI.

All and singular the above premises are true and within the admiralty and maritime jurisdiction of the United States and of this Honorable Court.

WHEREFORE, libelant prays that process in due form of law according to the practice of this Honorable Court in cases of admiralty and maritime jurisdiction may issue against said steamer “George W. Elder,” and that all persons having or claiming any interest in said vessel may be cited to appear and answer, but not under oath, the matters and things in

this libel contained, and that upon the final hearing this Honorable Court may pronounce in favor of libelant's said demand with costs against said vessel and her owners, and that said vessel may be condemned and sold to pay the same, and for such further relief as is proper in the premises.

WILLIAMS, WOOD & LINTHICUM,

Proctors for Libelant. [10]

United States of America,

State and District of Oregon,—ss.

I, Daniel Kern, first being duly sworn, on oath say I am the president of the libelant above named, and the foregoing libel is true as I verily believe.

DANIEL KERN.

Subscribed and sworn to before me this 31st day of August, 1909.

[Seal]

J. C. FLANDERS,

Notary Public for Oregon.

Filed August 31, 1909. A. M. Cannon, Clerk.
[11]

And afterwards, to wit, on the 1st day of October, 1909, there was duly filed in said court an Answer in words and figures as follows, to wit: [12]

*In the District Court of the United States for the
District of Oregon.*

COLUMBIA CONTRACT CO.,

Libellant,

vs.

The Steamship "GEORGE W. ELDER," Her Ma-
chinery, Tackle, Apparel and Furniture,
Respondent.

Answer.

To the Honorable Judges of the District Court of
the United States, for the District of Oregon:

Charles P. Doe, claimant for the ship "George W. Elder," her tackle, apparel, furniture and machinery, intervening for his interest therein, for answer to the libel and complaint of Columbia Contract Co., against the said ship, her tackle, etc., admits, denies and alleges as follows:

I.

This claimant is informed that it is a fact and he therefore admits that libellant was and is a corporation, as alleged in the libel, but this claimant does not know and has not been informed save by said libel whether or not the said libellant is the owner of that certain screw steamship known as the "Daniel Kern," or ever was at any time the owner thereof or of any interest therein, and therefore denies the same. Claimant is informed that it is true and he therefore admits it to be a fact that on and prior to the 18th day of August, 1909, the said steamship "Daniel Kern" was employed by the libellant in the

towage of barges to and from Ft. Stevens, Oregon, and points upon the Columbia River above Ft. Stevens. [13]

II.

This claimant denies that the "George W. Elder" is a screw steam vessel flying the American flag and plying regularly between Portland, Oregon, and Eureka, San Francisco and San Pedro, California, and that G. M. Jessen is and was during all the time in the libel mentioned her master, and that this claimant is the owner and was the owner of said steamship "George W. Elder" during all the time in the libel mentioned, but this claimant denies that J. H. Peterson was during said time or is the owner of said vessel or of any part thereof or interest therein. This claimant admits that the said steamship "George W. Elder" was, at the time of filing said libel, lying in the port of Portland and within the District of Oregon, and was and is within and subject to the jurisdiction of this court.

III.

This claimant is informed that it is true and he admits it to be a fact that between the hours of twelve and one o'clock in the morning of August 18th, 1909, the "Daniel Kern" was a vessel under way in the waters of the Columbia River about abreast of Waterford, Washington, but denies that she was then or there engaged in making fast to the three loaded rock barges mentioned in the libel or to any barges whatever, but, on the contrary, this claimant avers that she had at the time in the libel mentioned made fast to said barges. Claimant is informed that it is

true and he therefore admits that the said rock barges mentioned in the libel then and there belonged to the libelant, and that the said "Daniel Kern" had made fast thereto for the purpose of taking the same from said point to Ft. Stevens, Oregon. This claimant denies that said vessel, the said "Daniel Kern," was in good order or condition, but this claimant does not know and has not been informed save by said libel whether or not said "Daniel Kern" was well or [14] sufficiently manned or equipped with a full or competent staff of officers or crew, and he therefore denies the same and the whole thereof. And this claimant denies that said vessel, the said "Daniel Kern," had burning or displayed the regulation lights at said time or at any time in the libel mentioned. This claimant does not know and has not been informed save and except by said libel whether or not said "Daniel Kern" then or there, or at any time in the libel mentioned, had burning or was displaying a port sidelight colored red or any port sidelight, but this claimant is informed that it is true, and he therefore admits, that said steamer did have burning and was displaying her starboard sidelight colored green, but whether or not both or either of said sidelights were or was fitted with the regulation or any screen or were or was burning in the proper place or places, he does not know and has not been informed save and except by said libel, and he therefore denies the same and the whole thereof. This claimant admits that said "Kern" then and there had burning and was displaying her masthead light and a white light upon her foremast, but he does not

know and is not informed save by said libel whether or not she had burning or was displaying a white light astern, and he therefore denies the same. This claimant denies that the said "Daniel Kern's" engines were stopped at the time mentioned in the libel or at any time mentioned in the libel or at the time she was making fast to her tow, but this claimant admits that she had a head-line at the time running to the barges from the port barge of her tow, and this claimant avers that the said "Kern" was then and there made fast to said port barge, and this claimant is informed and believes, and he therefore alleges the fact to be, that the said "Kern" was then and there made fast to the [15] starboard barge and that her bow was against the middle barge of the tow and between the port and starboard barges of said tow. This claimant denies that the said "Daniel Kern" was headed down the Columbia River, and denies that the said barges were or that any of them was headed substantially or at all at right angles to her port bow or towards the Oregon shore of the Columbia River. On the contrary, this claimant avers that the said "Kern" and all of the said barges were headed towards the Washington shore of the Columbia River and obliquely across the channel of said Columbia River.

This claimant admits that said steamship "George W. Elder" left Portland, Oregon, on her voyage from that port to California ports, on the evening of August 17, 1909, and while descending the Columbia River upon such voyage and in the vicinity of Waterford, Washington, sighted the said "Daniel Kern"

ahead and down the Columbia River. This claimant denies that neither of the sidelights of the said "Daniel Kern" was visible at that time to those in charge of the navigation of the "Elder," but avers that the starboard light, being the green light on said side of the "Daniel Kern," was then and there visible to those in charge of the navigation of the "Elder," and this claimant denies that the said "Daniel Kern" was then or there or at any time after the "Elder" sighted her, in such position that her, the said "Daniel Kern's," starboard sidelights could not be or were not visible. This claimant admits that the "George W. Elder" blew one short blast of her steam whistle, and claimant avers that she blew such blast when between one-half and three-quarters of a mile distant from and above the said "Daniel Kern," in said Columbia River, and denies that the said "Elder" blew such blast as a signal of her desire to overtake and pass the "Daniel Kern" on the right or starboard hand of the said "Daniel Kern," but, on the contrary, this claimant avers that when the "Elder" [16] came within sight of the "Daniel Kern" as aforesaid, the starboard light of the latter was in plain view of those in charge of the "Elder," and the said "Kern" and her tow were at least one thousand feet from the Washington shore, the whole distance being deep water and of more than sufficient depth for the "Elder" to safely navigate the same, and the "Elder" blew the said one short blast as aforesaid for the purpose of indicating and did thereby indicate to the said "Daniel Kern" that she, the said "Elder," intended to pass to the right of

the said "Daniel Kern" and between her and the said Washington shore. This claimant denies that to the said signal or single short blast of the whistle of the "Elder," the said "Daniel Kern" replied with four short rapid blasts of her whistle or by giving what is known as the danger signal or replied or gave any blast of her steam whistle whatever, or in any wise or in any manner whatever answered the said signal of the "Elder," and denies that the said "Kern" gave four short or rapid blasts or any short or rapid blast or blasts or any blasts whatever of her steam whistle, or gave the danger signal or any signal whatever, or gave any whistle or signal indicating that the said "Daniel Kern," by reason of the fact that she did not have her tow under control or otherwise or at all, did not think it safe for the "George W. Elder" to attempt to pass at that point, and denies that the said "Daniel Kern" gave any signal or response whatever to the said one blast or signal of the "Elder." Claimant denies that to the alleged four short and rapid or four short or rapid blasts of the steam whistle of the said "Kern," the said "Elder" again blew one short blast, but claimant admits that the "Elder" did again blow one short blast of her steam whistle, but denies that she did so in response to the alleged four short and rapid blasts or any short or any blasts or blast of the whistle or any signal whatever of the said "Daniel Kern," [17] and denies that the said "Daniel Kern" again or at all replied with four short and rapid or short or rapid blasts of her own steam whistle, but, on the contrary, avers that the said "Daniel Kern" re-

sponded to the second single blast of the steam whistle of the "Elder" by giving two blasts of her own, the "Kern's," steam whistle, followed quickly by two more blasts thereof, and claimant denies that almost immediately thereafter, or at all, the "George W. Elder" came into collision with the "Daniel Kern," although claimant admits that shortly thereafter the said "Elder" and the said "Kern" came into collision, the "Elder" striking the "Kern" upon her starboard quarter, but denies that the "Elder" struck the "Daniel Kern" in her starboard quarter aft. This claimant admits that by reason of such collision the hull of the "Daniel Kern" was so injured that she shortly thereafter sank in the waters of the Columbia River.

IV.

This claimant denies that said collision was occasioned solely or at all by reason of or through the negligence or carelessness or any negligence or carelessness whatsoever of those or of any person or persons in charge of the navigation of the said "George W. Elder," and denies that the said "George W. Elder" did not keep out of the way of the said "Daniel Kern" or attempted to pass the said "Daniel Kern" from astern, or attempted to pass the said "Daniel Kern" from astern without receiving the assent of the said "Daniel Kern" indicated by the appropriate or any whistle, or at all attempted to pass the said "Kern" either astern or otherwise, and denies that the said "George W. Elder" attempted so to do or attempted to pass the said "Daniel Kern" either astern or otherwise or at all when

or after the said "Kern" had blown four short and rapid blasts or any blast or blasts of her steam whistle or by any means or signal indicating that it was not safe for the said "George W. Elder" to attempt to [18] pass at that point, or otherwise or at all attempted to pass her; and this claimant denies that no act of the "Daniel Kern" or of her master or pilot or officers or crew in any respect whatever contributed to said collision, but, on the contrary, this claimant avers that the said collision was wholly the result of and was solely due to the negligence and want of care and the wrongful acts on the part of those in charge of the said "Daniel Kern," as hereinafter more particularly alleged and set forth.

And this claimant, further answering, avers that on the night of the 17th day of August, 1909, the said "George W. Elder" was proceeding down the Columbia River as in the libel averred, and this claimant avers that the said "Elder" was then and there in charge of a full and competent crew and was fully provided with and had all the lights required by law and by the regulations of the United States for steamships of her class and employment, lighted, burning and displayed in the manner required by law and such regulations; that said steamship "George W. Elder," when she arrived at a point between one-half mile and three-quarters of a mile distant from and above the said steamship "Daniel Kern," the said "Daniel Kern" was off the port bow of the "Elder" and her starboard or green light was visible to those in charge of the "Elder," and thereupon and then and there being distant between one-

half and three-quarters of a mile as aforesaid, the "Elder" sounded one loud short blast of her steam whistle as a signal to the said "Daniel Kern" and those in charge of her of the purpose of the "Elder" to pass to the starboard or right hand of the said "Kern" and between her and the Washington shore. That there was then [19] and there and at said time between a thousand and twelve hundred feet of deep water sufficient for the "Elder" to navigate between the said "Daniel Kern" and the said Washington shore; that the said "Daniel Kern" and those in charge of her did not respond to or in any way answer the said whistle or signal of the said "Elder," whereupon those in charge of the said "Elder" immediately put her engines at slow speed and blew another short and loud blast of the steam whistle of the "Elder," again indicating and signalling to those in charge of the "Kern" the purpose and desire of the "Elder" to pass to the right of and between her and the Washington shore as aforesaid, but the said "Daniel Kern" did not immediately respond to the said second signal of the "Elder," but shortly thereafter did respond thereto by blowing two rapid blasts of her steam whistle and after a short interval by blowing two more rapid blasts of her steam whistle; that immediately on the giving of the first two blasts of the steam whistle of the "Kern," those in charge of the "George W. Elder" stopped and reversed her engines and immediately put them at full speed astern, put her helm hard astarboard and did all in their power to check the speed of and back the "Elder" and avoid the said "Kern." That the said

steamship "Daniel Kern" and those in charge of her were negligent and at fault in failing and neglecting to blow one short blast of the steam whistle of the said "Kern" in response to the first whistle of the "Elder," for this claimant avers that there was ample room for the "Elder" to pass to the right of the "Kern" and between her and the Washington shore as she, the "Elder," proposed to do and had indicated her purpose to do by blowing the said single blast of her steam whistle, and this claimant further avers that the said steamship "Daniel Kern" and those in charge of her were negligent and careless and at fault in failing, neglecting and refusing to answer the second single blast of the steam whistle of the "Elder" given as aforesaid [20] by one single short blast of the steam whistle of the "Daniel Kern," for this claimant avers that there was still ample time for the "Elder" to pass to the right of the said "Kern," and there was also, as above alleged, ample space and depth of water to enable her to pass in perfect safety on the right-hand side of the said steamship "Daniel Kern," but this claimant alleges that the said steamship "Daniel Kern" and those in charge of her negligently, carelessly and wrongfully and in entire disregard of their duties refused to allow, permit or consent to the passing of the "Elder" to the right of the "Kern" and between her and the said Washington shore, but, on the contrary, signalled to and notified the "Elder" and those in charge of her not to attempt to pass to the right of the "Kern," and thereupon those in charge of the "Elder" were compelled to and did reverse

her engines and put them full speed astern, and endeavored to back the said "Elder" so as to prevent her from coming into collision with the said "Kern." And this claimant avers that the said "Elder" is equipped with a left-handed wheel, and therefore when she backs she of necessity swings her bow to port and her stern to starboard, and this claimant further avers that when the "Elder" first came in sight of the said steamship "Daniel Kern," the said "Kern" was displaying and operating a powerful searchlight and carelessly and negligently, wrongfully and unlawfully was flashing and directing the same much of the time up the river and frequently into and upon the "Elder" and into her pilot and wheel house, and in such a manner as to embarrass and interfere with those in charge of the "Elder" in directing and controlling her and so continued to do up to the time of the collision aforesaid; and this claimant further avers that had those in charge of the said steamship "Kern," even when the "Elder" sounded her whistle the second time as aforesaid, consented to the "Elder" going to the right, she [21] could have and would have safely passed by the "Daniel Kern," but because of and by reason of the negligent, wrongful and improper acts and conduct of those in charge of the said "Daniel Kern," the said "Elder" was not permitted to go by and pass to the right of the said "Kern," and those in charge of the navigation of the said "George W. Elder" were compelled to and did do all in their power to back her and keep her away from the said "Kern" and at the same time avoid going to the right of her,

and the only way that it was possible for the "Elder" so to do was to reverse her engines and put them full speed astern as she did as aforesaid and put her helm hard astarboard as she did as aforesaid; but by reason of the fact that the said "Elder" was and is a large and heavy ship and had a heavy cargo on board, and by reason of the fact that the current of the river was carrying her downward, it proved to be and was impossible to sufficiently check her speed so as to keep her away from or pass to the port or astern of the "Kern," and because of and by reason of the negligent, wrongful and improper acts and conduct of those in charge of the "Daniel Kern" as aforesaid, the "Elder" came into collision with the said "Daniel Kern" as aforesaid, and whatever of injury was suffered by or afflicted on the said "Kern" was the result of and due entirely to the negligence and wrongful acts of those in charge of the said "Kern" as aforesaid.

And claimant further answering avers that at no time during the time mentioned in the libel or herein mentioned did the said steamship "Daniel Kern" have, keep or maintain a lookout or any lookout, but, on the contrary, those in charge of her negligently and carelessly during all of said time failed to have or keep a lookout on board of said steamship "Daniel Kern." And claimant further answering avers that libelant on the 17th and 18th days of August, 1909, was engaged in transporting [22] rock from a point on said Columbia River about — miles above the place where said collision occurred, to the mouth of said

river, and had been so engaged for and during several months prior to said dates. That libelant transported such rock on barges and employed said steamship "Daniel Kern" and the steam tug "Hercules" in towing such barges. That on the night of August 17th, 1909, the said "Kern" came up said river from the mouth thereof with three empty barges in tow and met the said tug near Waterford aforesaid with three barges loaded with rock in tow. That said "Kern," pursuant to an agreement and understanding with said "Hercules," let go of and left said empty barges at a point a short distance above said Waterford in the channel of said river and in the track or course usually followed by vessels navigating said river, and those in charge of said "Hercules," pursuant to an agreement and understanding with those in charge of said "Kern," let go of and left said loaded barges at the point a short distance above where said collision occurred and in the direct track or course usually and customarily followed by all vessels under way up or down said river. That said loaded barges were so left by said "Hercules" to be picked up and taken in tow by said "Kern" for the purpose of towing the same to the mouth of said river. That in leaving said loaded barges where she did the said "Hercules" and those in charge of her were guilty of gross carelessness and negligence and those in charge of said "Kern" were guilty of gross carelessness and negligence in consenting to and agreeing as aforesaid that said loaded barges should be dropped and left for her, the "Kern," by said "Hercules," at such point or place

in the river, for claimant avers that at said point and for a considerable distance above and below said point the water of said river is of sufficient depth for a distance of one-half mile or more towards the Oregon shore to afford safe [23] navigation for all said barges and for said "Hercules" and said "Kern," and it was the duty of those in charge of the navigation thereof to make such exchange of barges and tows at one side of and at a safe distance from the fairway or regular course of vessels under way up and down said river, but claimant avers that in violation of their duty in such regard, those in charge of said vessels "Hercules" and "Daniel Kern" carelessly and negligently arranged to and did exchange their tows aforesaid at the time aforesaid in the fairway for ships and vessels under way up and down said river. That said loaded barges at the time said "Kern" was making fast thereto preparatory to towing them, and when the "Elder" signalled the "Kern," as aforesaid, had drifted but a short distance down the river from where they were left by the "Hercules" and were still as aforesaid in the ship's fairway or course as aforesaid. That had said "Daniel Kern" been actually under way down said river with said tow or been engaged in making fast thereto off at one side towards the Oregon shore from said course or fairway, the said collision could not and would not have occurred.

V.

And this claimant denies that by reason of said collision so alleged to have been occasioned by the negligence and carelessness or the negligence or

carelessness of those in charge of the "George W. Elder," or otherwise or at all, libelant, as owner of the "Daniel Kern" or otherwise, has sustained damages or any damages in or about the raising or repairs of said vessel or loss of equipment upon said vessel or loss of the use of the said vessel in any sum or amount whatever, and denies that the said collision was so occasioned or was at all occasioned or in any manner occasioned by the negligence and carelessness or by the negligence or carelessness of those or of any person or persons in charge of the "George W. Elder," [24] but, on the contrary, avers that the said collision was caused by the negligence and carelessness and wrongful acts of those in charge of the said "Daniel Kern" as in this answer alleged. Denies that the libelant, as owner of the said "Daniel Kern," or otherwise or at all, has sustained any damages whatever as a result of said collision or otherwise or at all, or as the result of any negligence or carelessness or the alleged negligence or carelessness on the part of those or any of those in charge of the said "Elder," or has sustained any damages whatever in or about the raising or repairs of said "Kern" or loss of equipment upon said vessel or loss of use of said vessel in any amount or in an amount not at present ascertainable or at all. Denies that said alleged losses will aggregate or may aggregate the sum of \$25,000 or any sum or amount whatever, and denies that for said alleged losses or any losses, or for alleged losses or any losses in the sum of \$25,000 or in any sum or amount whatever, the libelant has a lien or any lien or claim

against or upon the said "George W. Elder," or any claim whatever against her owners personally or any claim whatsoever.

VI.

That all and singular the premises are true.

WHEREFORE, claimant prays that this Honorable Court will be pleased to pronounce against the libel herein, and that the same may be dismissed with costs to this claimant to be taxed.

CHAS. P. DOE,
Claimant.

Subscribed and sworn to before me this 30 day of Sept., 1909.

[Seal] C. W. FULTON.

C. W. and G. C. FULTON,
Proctors for Claimant.

State of Oregon,
County of Multnomah,—ss.

Due service of the within answer by the [25] delivery of a duly certified copy thereof as provided by law, at Portland, Oregon, on this first day of October, 1909, is hereby admitted.

WILLIAMS, WOOD & LINTHICUM,
Of Attorneys for Libelant.

Filed, October 1, 1909. A. M. Cannon, Clerk. [26]

And afterwards, to wit, on Monday, the 3d day of February, 1913, the same being the 76th Judicial day of the regular November term of said court—Present, the Honorable CHARLES E. WOLVERTON, United States District Judge, presiding—the following proceedings were had in said cause, to wit: [27]

In the District Court of the United States for the District of Oregon.

No. 5162.

February 3, 1913.

COLUMBIA CONTRACT COMPANY

vs.

Steamship "GEO. W. ELDER."

Minutes of Court—February 3, 1913—Findings of the Court.

This cause, heretofore submitted to the Honorable Charles E. Wolverton, upon its merits, came on regularly at this time for the ruling and decision of the Court; whereupon, after due consideration, the Court finds the said steamship "George W. Elder," at fault, and therefore responsible to libellant to whatsoever damages the "Kern" has sustained, the amount of said damages to be ascertained for the plaintiffs yet to be adduced. [28]

And afterwards, to wit, on the 3d day of February, 1913, there was duly filed in said court an Opinion, in words and figures as follows, to wit: [29]

*In the District Court of the United States for the
District of Oregon.*

COLUMBIA CONTRACT COMPANY,

Libelant,

vs.

Steamship "GEORGE W. ELDER," Her Machinery,
Tackle, Apparel and Furniture,

Respondent.

CHARLES P. DOE,

Claimant.

Opinion.

PAGE, McCUTCHEON, KNIGHT & OLNEY,
C. E. S. WOOD and IRA A. CAMPBELL,
for Libelant.

C. W. & G. C. FULTON and DENMAN & AR-
NOLD, for Respondent and Claimant.

The Columbia Contract Company was, at the time of the collision herein complained of, the owner of the "Daniel Kern," and was engaged in conveying rock from Fisher's Quarry, situate on the north bank of the Columbia River above Vancouver, Washington, to the Government jetty below Fort Stevens, at the mouth of the Columbia River. Barges were employed in transporting the rock, three being lashed together side by side in such a way that the center barge extended forward of the others nearly half its length. These barges, when so made fast to each

other, were towed by steamers. The steamer made fast to the tow by mooring with her prow from the rear of the barges between those on the outer sides, and in this way the tow, consisting of the three barges, was navigated by pushing it ahead of the vessel. On the day of the accident libellant was operating two tows thus made up, with two steamers, the "Daniel Kern" and the "Hercules." The "Kern" was engaged in navigating the tow, consisting [30] of empty barges, from Fort Stevens up the river to where she met the "Hercules," navigating a tow consisting of loaded barges from the quarry. There the steamers would exchange their tows, and each proceed back to its starting point. Thus the "Kern" operated on the lower river and the "Hercules" on the upper. The reason for this was that the "Kern" was of deeper draft than the "Hercules," and better suited to navigate the waters at the mouth of the Columbia, and the "Hercules," being of lighter draft, could reach the quarry in greater safety. These vessels, during the time they had been thus operating in conjunction with one another, had generally met at some point between Waterford Light and Oak Point above. In making the exchange of tows the "Kern," on meeting the "Hercules," would proceed some distance above, with her empty barges, when she would let go of them, and return to make fast to the loaded barges in tow of the "Hercules."

The "Kern" is a vessel 153 feet in length and about 26 feet beam, and the barges which were being taken in tow at the time of the collision ranged from 142 to 152 feet in length and 35 to 36 feet beam.

On the night of the collision the "Kern" met the "Hercules" somewhat above the Waterford Light, at about 12:30 A. M., the former proceeding up the river to a point abreast of or a little above Cooper's Point, where she let go of her tow well out of and to the south of the fairway or ship's course. The "Kern" then returned, meeting the "Hercules," which had let go the loaded barges, between Cooper's Point and Waterford Light. The "Kern" approached and began to maneuver to make fast to the loaded barges. In the meantime the barges had swung around until they assumed a position nearly crosswise to the stream, their bows pointing slightly downstream and towards the Oregon shore. The "Kern" came up by their stern, heading approximately [31] downstream. Her bow had entered past the port barge quartering so that her nose was pointing nearly to the port quarter aft of the starboard barge, but not touching it; neither was she against the stem of the port barge. A line had been made fast to the starboard quarter of the port barge (the chief officer of the "Kern" says to the port quarter, and that the "Kern's" nose lay past the port quarter of the starboard barge), and as it was about ready to be tightened up from the "Kern," the "Elder" came into collision with her from the rear. There was at the time some slack in the line, one witness saying about five feet, others being not so definite.

The position of the "Kern" and her tow at this time was nearly opposite the Waterford Light, in-stream from the Washington shore approximately 1,000 feet, and practically in the fairway or ship's

course for vessels of heavy draft. The stream was about a mile wide, and navigable for heavy draft ships up to within 100 to 40 feet of the Washington shore, and for a half mile on the other side of the "Kern."

The "Elder" is a ship 250 feet in length, with 38-foot beam, running on the night of the accident with 17 or 18 feet of draft at the stern, and some four feet less at the bow. She is navigated by a screw propeller, and her helm is operated with hand gear. She was proceeding downstream, and struck the "Kern" on her starboard quarter, about 16 feet from her stern, at an angle near 34 degrees, protruding into her to near her middle line, and breaking her wheel-shaft. The "Kern" was thus jammed against the barges on her port side, the barges being thrown around until their bows were headed directly upstream. The "Kern" was shoved around until she stood across the stream, heading towards the Washington shore, where she sank from the injuries sustained.

The night was dark, but clear, and the water slack, [32] with no appreciable current, possibly the first of the flood.

As to these facts, there is no substantial controversy.

Michael Moran, the pilot in charge of the "Kern," relates that, while standing in the pilot-house on the starboard side, looking out of the window forward, he heard one whistle. On hearing it, he went out the door on the starboard side, and saw the "Elder" coming right at him, and appearing to him to be a short

distance away. He took note to ascertain if she changed her course, and, observing no change to shut out her "signal lights," went in and gave four short blasts of the whistle. This was probably a second or so after hearing the first whistle. His first thought was that the "Elder" was going to run him down. After blowing the four blasts he jumped outside again, by the starboard door, on the bridge—stood there for a few seconds, and got one whistle from the "Elder." The "Elder's" course continued as before, and witness could see her green and red lights and her masthead light, having seen the same lights when he heard her first whistle. He could see no change in the "Elder" from the time he saw her before, and she was headed right for him. She was then getting so close that the witness stepped back into the pilot-house, and gave four short blasts—"gave the danger whistle." He sprang outside again to watch the "Elder." She was then coming right head-on, and he noted no change in her course. Waiting awhile, he observed her swinging to port, and, concluding that she was backing, rang the "Kern" full speed ahead to avoid a collision. The "Elder" was then 25 or 30 feet away. The "Kern's" helm was aport. This when the boat got in action would swing her bow towards the Washington shore and her stern in the opposite direction, and bring the "Elder" across on her starboard quarter. Only a few seconds elapsed between the time of the first four blasts given by the "Kern" and the second whistle of the "Elder,"—"only a short time anyway—very short," and probably a second or so between the

"Elder's" second whistle and the "Kern's" last four blasts. The effect of [33] the collision was that the head-line of the "Kern" came tight and swung the barges along her side, heading upstream. If no change had taken place in the "Kern," the "Elder" would have struck her a little aft. Using witness' language: "I had to look right aft from the 'Kern's' bridge, and the 'Elder' was coming right directly astern of me, a little the starboard quarter as near as I knew, but as near as I could judge pretty well astern and headed right for me." The searchlight on the "Kern" was being used to assist the men on the barges, and was not thrown upstream at any time.

The witness was then asked: "What reason, if any, Captain, did you have for responding to the one blast signal of the 'Elder' with four short blasts?"

A. Well, my reason was that I concluded there was nothing going to happen but a collision; that he was going to run right into me and I thought I would warn him of the danger he was approaching.

Q. Why did you think there was going to be a collision? A. Well, I could see by his lights—judging the way he was heading by his signal lights—he was heading right for me all the time. Not making any attempt to alter his course that I could notice.

* * * Q. At that time will you state whether or not he was swinging or whether or not his lights were stationary or how they were? A. They seemed to me to be about steady. He seemed to be coming right head-on to me steady. I couldn't notice any change of his signal lights. If he was swinging I couldn't notice it. Q. How was the room between

you and the Washington shore? A. There was considerable room there, anyway from twelve to thirteen hundred feet of room, as near as I could judge.

* * * Q. In view of these facts, why didn't you give him—respond with a one whistle signal?

A. Well, I would have if he had shut out his green light. I would have given him the regular passing whistle, but he didn't make the attempt to do it and I thought it was my place to give him the danger whistle; on account [34] of laying still and the rock barges on my port bow, I couldn't comply with his whistle to go ahead on the starboard helm, was my reason for doing it." Witness says further that the danger signal on the Columbia consists of four short and rapid blasts of the whistle. To the best of his judgment the "Elder" would have run into the stern of the "Kern" if the "Kern" had not gone ahead on her engine at the time she did. On cross-examination witness said he thought the "Kern" probably moved 30 to 40 feet in the water from dead in the water until the "Elder" struck her, and that there was very little change in her position unless she swung around a little on account of her helm being a port. When he first saw the "Elder" she was probably 800 or 1,000 feet away; it was a dark night, and all he had to go by was the appearance of the masthead light. Then witness was asked: "What did you do when you first saw her? A. Well, the first time I saw her I waited until I see whether he was altering his course or not, and he didn't appear to alter his course one particle by his signal lights, and I jumped in the pilot-house and gave him

four short blasts of the whistle in answer to his one whistle. Q. Did he have to alter his course before you had given him your answering whistle? A. Well, not necessarily. Q. Now, as a matter of fact, the rule requires that you shall give him an answering whistle before he alters the course, doesn't it? A. That is up to me, whether I think I am in danger of being run down. It is up to me to sound the danger signal or up to me to judge whether there is any danger." Further on he says: "When he was heading right for me I thought it was well to indicate the danger he was approaching. That is what made me give the danger signals." Being asked, "And the only thing he could have done when he got the four whistle signal was to reverse his propeller, wasn't it?" witness answered, "Well, he could have went either way or backed up then. It is [35] up to him to judge, according to my notion and according to the rules, too." He further states that, after he let go the empty barges in going down to the "Hercules," he got right close to the loaded barges, the "Hercules" having just backed out in order to let him go in. Being recalled, he testified: "Q. Now, as I understood you yesterday you said the reason why you blew the four blasts was because you could not see him moving over to your starboard at the time he asked for permission to go over there with the one whistle signal; that is correct, is it not? A. That is correct, yes, sir. Q. And he had abundant time to have gone over there when he was a thousand feet away without striking you, had he not? A. He had if he had a mind to do it, yes. Q. And your theory

of the case is that before he got any response from you he should have put his helm over to port and started to make that maneuver? A. That is what I understand the law, to accompany the whistle by the alteration of your helm so as the other man can know what you are doing."

J. E. Copeland, the master of the "Kern," was in the pilot-house at the time of the collision. He had retired to his room and gone to bed, but was awake. The first intimation he had of the approach of the "Elder" was a whistle which he heard from her. He says the "Kern" immediately blew four whistles—"almost immediately, as soon as the pilot could blow the four whistles he blew them." He then heard the "Elder" blow one whistle again, "almost immediately" after the "Kern" had blown the four whistles, and "The 'Kern' blew four whistles again." This was also "almost immediately" after the "Elder" had blown her second whistle. He was on the floor of his room when the "Kern" blew her last four whistles, went from there into the pilot-house, looked out the starboard door, saw the "Elder" coming astern of the "Kern" headed right for her, and could see all three of the "Elder's" lights burning. She appeared as if she were coming down past the stern of the steamer, but heading almost amidships—"maybe a little [36] aft of 'midships." He turned to the wheel and found it over to port, and lashed. About that time the "Elder" struck the "Kern." The latter was then working full steam ahead. She had probably moved 30 or 40 feet—not to exceed 40 feet, when struck. Her stern swung to

port. Witness was of the opinion that had the "Kern's" helm been put hard to starboard, and the ship worked full steam ahead, she would not have gotten out of the way of the "Elder" at the time he saw her, as "they were too close. She (the 'Kern') could not possibly have gotten out of her way." He was then asked, "How soon did you see them after the last four whistles were blown? A. Well, it could not have been more than a few seconds, because just as the four whistles were blown he gave a bell to go ahead, and that was at the time I was stepping in the pilot-house, and I immediately went to the starboard side, looked aft and saw the 'Elder.' Q. How far aft would you think the 'Elder' was away at that time? A. I would not think she was over forty feet." He further says that, on hearing the signal from the "Elder," he would have done as the pilot did in sounding four whistles, and he would have put her helm apart and turned her full speed ahead; that if the "Kern" had succeeded in getting out of the way, with the "Elder" headed as she was when he first saw her, the latter would have struck the barges. At the time of the collision the "Kern" was swinging, which would bring her over at an angle with the "Elder" whether the latter was swinging or not. Using the language of witness a little further on: "The 'Kern's' movement would have thrown us to the side of the 'Elder's' bow whether the 'Elder' would have been swinging or not. If the 'Elder' had come directly ahead, you understand, the movement of the 'Kern' would have directed the 'Elder' right into our starboard side." Witness was of the opin-

ion that if the "Elder" had been on a swinging course to port for 1,000 feet she would not have hit the "Kern," because she would probably have stopped before she got that far. If she was on such a course for 500 feet and had been directly behind [37] the "Kern," she would not have struck, but she was a little to the starboard of the "Kern."

Joseph O. Church, the master on the "Hercules," says he passed the "Elder" "just a little below Cooper's Point—not much; * * * probably a thousand feet offshore." The "Elder" exchanged one whistle with the "Hercules," the "Elder" giving the first whistle. After passing the "Elder," witness heard the "Elder" give a passing signal with one whistle, and the "Kern" responded with four short whistles. The signals were "pretty close" together—"about the usual time." Right afterwards the "Elder" blew another whistle, and the "Kern" again responded with four. The "Kern" answered supposedly a quarter of a minute after the "Elder" signalled. Witness heard the crash when the collision took place, and at that time was just about to his barges, "just about going in between" them.

George Hale, the mate on the "Hercules," heard the exchange of signals between the "Elder" and the "Hercules" and the "Elder" give a passing signal afterwards, and the "Kern" give the danger signal, four short whistles. A little further on he says, "I heard the 'Kern' blow her danger whistle twice. The 'Elder' only blew once to my knowledge." The "Elder" blew her whistle to the "Kern" just as the "Hercules" was abreast of her.

Hans Jensen, assistant engineer on the "Kern" and in charge at the time, heard the signal from the "Elder" and reply from the "Kern" repeated as described by other witnesses. After the exchange of signals he received signals from the bridge of the "Kern" full speed ahead, and acted accordingly. This was not over five or ten seconds after the second series of whistles was given, and it was not over fifteen seconds until the collision occurred. Later the witness says about half a minute. The engine, he says, had probably made between [38] 50 and 60 turns when it occurred, and the vessel would get some way at 25 revolutions.

Charles W. Spaulding, the engineer on the "Kern," was in his room at the time, but heard the signal from the "Kern" with four whistles, and heard that repeated, and after that a succession of whistles, then the crash. He was of the opinion that one or two minutes elapsed between the time of the first and second four whistles of the "Kern."

Arne Arneson was a deckhand on the "Kern," on the forecastle-head at the time. He heard the signals exchanged between the "Elder" and the "Kern": first a signal, one whistle, from the "Elder," answered by four short blasts from the "Kern," and about—not quite a half a minute afterwards, the 'Elder' blew one whistle again." Then the "Kern" blew four short blasts again. The headline was at the gypsy-head, and witness was about to "heave in on it," and the boat was going to back up to swing the barges around so it "could get into them." Witness saw the "Elder" at the time he

heard the first signals exchanged, and says she was about a half mile above, "right astern of us," and that he could see all her lights. He saw her while she approached, and she did not change her lights until after she blew her second whistle, when "she kind of swung off to the Washington shore." At the time he heard the bells signalling the engineer, the "Elder" was from 50 to 75 feet away, and was headed about midship of the "Kern." On cross-examination witness said he thought the "Elder" was "just abreast Cooper's Point" when he heard her first whistle, and that about two minutes' time elapsed before she struck the "Kern"—"between two and three minutes."

Arthur Nissen testifies that he was fishing at the time opposite Eureka cannery, perhaps a mile out, and heard the exchange of whistles between the "Elder" and the "Kern." He [39] says the "Elder" blew one whistle, the "Kern" answered with four, and this was repeated, and that an interval elapsed between the various whistles of perhaps a half minute. He heard the collision, and knew that the "Kern" sank, as her lights disappeared.

Edward Anderson was chief officer on the "Kern," and on the forecastle-head at the time of the collision, directing in getting a line to the tow. He saw the "Elder" approaching, saw all her lights, which indicated that she was coming head-on, noticed her at Cooper's Point when she blew her first whistle; she was shifting her course from Cooper's Point, which would be about a quarter of a mile from the "Kern." The "Kern" answered with four whistles

immediately. Next the "Elder" blew one whistle, and the "Kern" blew four. A very short interval elapsed between the "Elder's" second whistle and the "Kern's" four, and the collision occurred very shortly after the "Kern" blew her second four whistles; it "might have been a minute—a minute or so." Witness continued to observe the "Elder's" approach, and the same lights were visible all the time. After the "Elder" blew her second whistle, he sang out to the men on the barges to let go the line, in trying to get clear, as he saw there was to be a collision. A signal full speed ahead was given the "Kern" about this time, which was a couple of seconds before the collision, but the "Kern" "didn't pick up much." The "Elder," when he saw her astern, was running for the "Kern's" quarter.

On the part of the respondent W. H. Patterson, the pilot on the "Elder" was called, and testified that the maximum speed of the "Elder" is 11 or 12 knots; that she minds her helm "first-class," has a left-hand propeller, and backs to the starboard, thus throwing her bow to port, and, if running under full speed, she will swing to port. When he rounded Cooper's Point he saw a vessel ahead which proved to be the "Kern." He [40] could not see any sidelights, which indicated to him that the vessel was going downstream. His course after passing Cooper's point was down the Washington shore, aiming to keep off all the way from 600 to 800 feet in the locality where the "Kern" was lying. On that night when he saw the "Kern" his course would have

taken him in the vicinity of 400 feet from shore. When he received the signals from the "Kern," he testified he must have been 1,500 feet or more away—"about fifteen hundred, between twelve and fifteen hundred feet." The other vessel was then on his port bow. Witness further relates that, when he first came down by Eureka channel and came around Cooper's Point, he saw a vessel ahead and pulled his vessel around so he had the former on his port bow about a half point, which position he maintained until he got a signal from her, the same being in response to a signal from him. He then ordered the officer on the bridge to stop his vessel and put her engines full speed astern, which was done immediately. This threw her stern to starboard and her bow to port. The signal from the "Kern" he interpreted to be "either a cross-whistle or a danger whistle," and he supposed there must be some obstruction in the water ahead. He struck the "Kern" at about right angles. The response he got from the "Kern" was to a second signal he had given; he had given one before the signal that the "Kern" answered. On cross-examination he says he met the "Hercules" with the light barges in tow probably a quarter of a mile above Cooper's Point; that when he got the danger signals and put his ship full speed astern, he knew there was danger ahead of some kind, that he could see an obstruction ahead and knew a collision was imminent. He ported his helm just after passing Cooper's Point, so as to put the "Kern" on his port bow, which course was designed to put the vessel down by the "Kern" about 400 feet off

the Washington shore. Supposedly this course would take him 200 feet from the "Kern." Witness [41] further says he ordered his helm to starboard at the same time he put his vessel full speed astern, for the purpose of throwing the ship off as much and as quickly as possible. He blew one whistle after rounding Cooper's Point, and just after he ported his helm. To this he received no reply, and then he blew another whistle "a few minutes, almost immediately after," when he found the "Kern" did not answer. Using the language of the witness: "I seen I had plenty of room on the inside and I told the officer on the bridge to blow another whistle, for I seen I had plenty of fairway to go about my business clear." By backing and starboarding the helm, he expected both to stop the vessel before reaching the "Kern" and to steer clear of her. Witness further says he slowed his ship down when he blew the first whistle. He was then asked and answered as follows:

"Q. Captain, if your steamer is running full speed ahead—exactly what I asked before—if your steamer is running full speed ahead, can you stop her within three-quarters of a mile? A. Well, as I said a minute ago, it depends entirely upon circumstances—depends upon— Q. Under the conditions that prevailed there that night, we will say? A. Well, I ain't able to say. I might have said that there, but I don't know as I could tell exactly. As I said to Edwards at that time, I couldn't tell. Q. Did you say you could or no, sir, you couldn't do it? When you told Captain Edwards you

couldn't. He said, 'How long does it take the "Elder," backing full steam astern, to check her headway? A. Well, I should judge in the neighborhood of probably three minutes. You see, we was making—well, yes, in the neighborhood of three minutes.' When you made that answer you had in mind the conditions prevailing that night? A. I might have said that. Q. (Continues reading.) 'Couldn't her headway be stopped and her going astern within three-quarters of a mile? A. No, sir. Q. It couldn't? A. No, sir. Q. You [42] couldn't reverse and back her full speed astern and check her headway in three-quarters of a mile? A. No, sir.' Now, you didn't misunderstand Captain Edwards' question, did you? A. I don't suppose I did. Q. Now, then, you knew then that when you backed your engine full speed astern within a distance of 1,000 to 1,500 feet of the 'Kern' it was absolutely hopeless to stop before you reached the 'Kern'? A. No, I didn't. I thought it would swing her far enough so she wouldn't catch us. Q. To port? A. Yes. Q. You knew you couldn't stop the ship within that distance? A. I wasn't sure; might have stopped her." Later he further testified: "Q. Now, then, Captain, when you came around Cooper's Point and gave the first signal, of one blast to the 'Kern,' you didn't know whether it was safe for you to go by or not, did you? A. I did at that time, yes. Q. You did? A. Yes, because I could see I had this vessel on my port bow and there was an opening there; could have gone through on my own business. Q. Did you know

the conditions ahead? A. No. As far as I could see at that time and the conditions in the— Q. You don't know whether it was safe or not? A. I could go there. Mr. Denman.—Do you contend it wasn't safe in there? Q. You didn't know it, did you, Captain? A. Yes, the indication looked favorable to me—it was all right—I could go down with safety. Q. So you continued on your course? A. I did, certainly. Q. Despite the fact you received no response from the 'Kern'? A. I kept on my course because she was on my port bow and I knew I could go by safely, so far as I could see. Q. Nothing there so you couldn't get through? A. Not at that time." Later he answered: "We are supposed to blow a half a mile off, and as far as my judgment would allow me, I blew a whistle a half a mile off" (the first whistle) "after I got around the point."

[43]

Edward Whiteman, the third mate on the "Elder," says in effect that, after the "Elder" rounded Cooper's Point and sighted the "Kern" and got straightened out, she was steering down for Waterford Light, inside of the "Kern" and barges, so that the "Elder" had her on her port bow, in which course the "Elder" continued until she was cross-signalled, being about 1,200 feet away when the cross-signal came. The "Elder's" engines were reversed, she put full speed astern with her helm starboarded, the purpose being to make her stern swing to starboard and her bow to port, which would give her a curving course through the water. She struck the "Kern" on that course. Witness was of the

opinion that if the "Elder" had been right behind the "Kern" and 500 feet away, there would have been no difficulty in clearing her to starboard, and unquestionably none if the "Kern" had been 1,000 feet away. Witness says he kept ringing the telegraph full speed astern because he could see they could scarcely avoid a collision. Being so close to the "Kern," it was necessary to have all the steam possible to stop her. He was under the impression that the "Kern" blew two whistles twice, though "there is room for a doubt." He saw the reflection of the towing lights on the "Kern" at the time he blew the first whistle, and knew she was there heading down the river, but didn't know it was the "Kern." The "Elder" blew one approaching passing signal as she was rounding Cooper's Point on the starboard helm. Immediately on blowing the first whistle, witness "slowed the ship down dead slow," and kept on his course. Getting no response whatever to the first whistle, he blew a second whistle, and then came "the two short whistles twice," which indicated that the "Kern" either wanted the "Elder" to go over [44] on the other side, or else there was an obstruction in the river that he could not see, "that there was danger somewhere,"—"We were so close to him that the only thing we could do was to stop and reverse full speed astern.

* * * On either theory, we could not do anything else." On cross-examination he said he repeated the signal, he supposed, within about a couple of minutes or so. Witness says: "When he didn't give us a response to our first whistle, I slowed the

ship down and then blew again the same signal, one whistle to indicate that I wanted to pass on his starboard with our port side, between him and the Washington shore." The time elapsing between the two signals was anywhere from a minute to a minute and a half. Witness continued as interrogated: "Q. Well, then, which whistle was it you didn't get response to? A. The first whistle. Q. Then did you continue running on towards her? A. After slowing the ship down, yes, sir; but we were clear of him; we had him on the port bow. Q. You did? How far? A. Oh, about half or three-quarters of a point. Q. And how far would that bring you off the Washington shore? A. Off the Washington shore? Q. Yes. A. Well, it would have brought us away off, clear of the Washington shore. We were all right as far as the Washington shore was concerned. Q. Bring you about four hundred feet, would it? A. Yes. Q. And if you had her a point or three-quarters of a point on your port bow, that would shut out your green light, from her, wouldn't it? A. Our green light? Q. Shut out your green light from the 'Kern,' wouldn't it? A. It should, yes. Q. And if it didn't shut your green light out, then you didn't have her a point or three-quarters on your port bow? A. No, we didn't." Witness could see the "Kern's" lights when he was a little above Cooper's Point. [45]

Harl Asktedt, the quartermaster, saw some lights after the "Elder" rounded Cooper's Point, and so far as he could remember the "Elder" had the "Kern" about a half point on her port bow. He

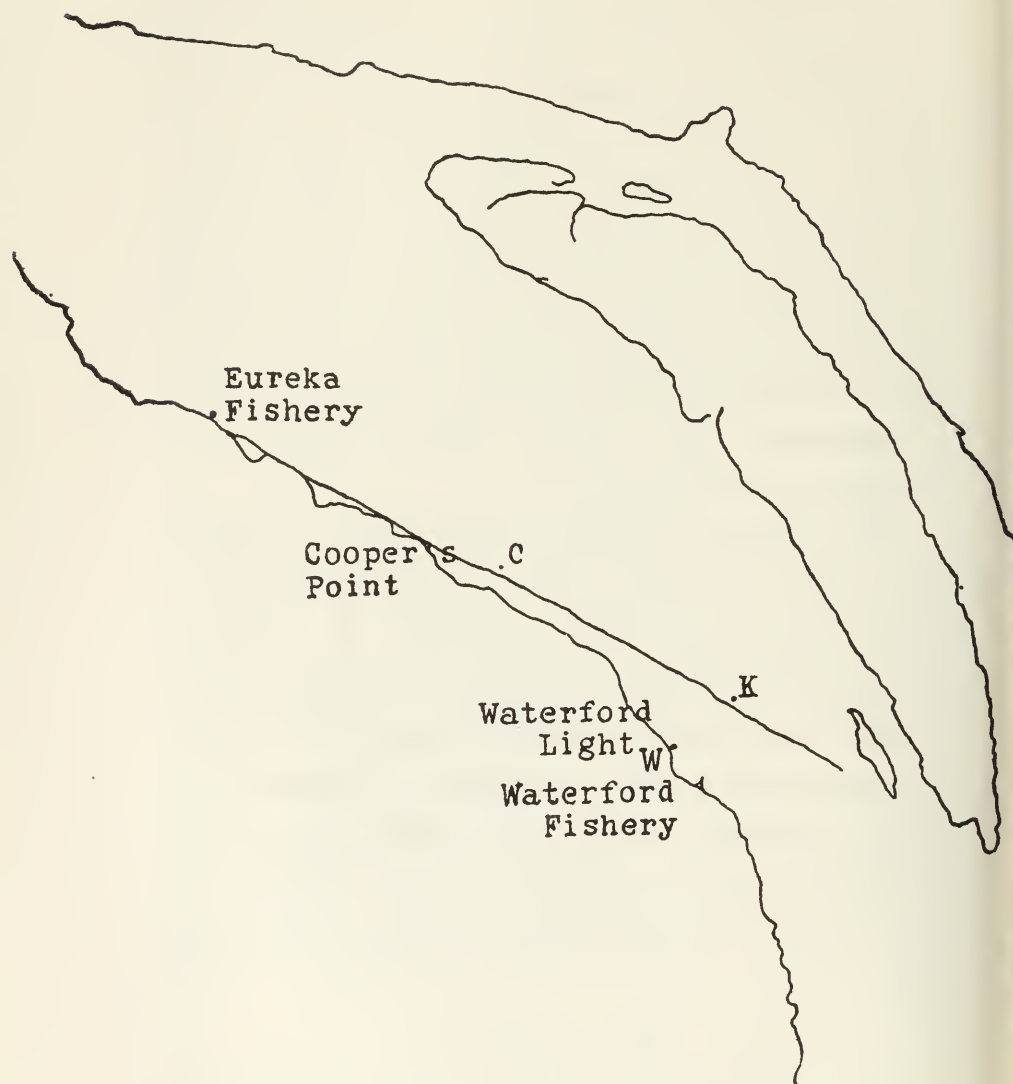
thought the "Elder" was about three-quarters of a mile from the "Kern" when she blew the first whistle, and about one-eighth of a mile when she blew the second. At that time he got command to put the wheel apart, and then hard to starboard, and to stop her full speed astern. The orders were executed. So far as he remembered, they got no response to the first whistle. Then the "Elder" blew another whistle, and the response was either two or four whistles. The "Elder" was put astern as soon as she got the response. She blew the second whistle immediately after the first. She struck the "Kern" almost immediately after he got his wheel hard over to starboard. The "Elder" did not swing much, so far as he remembered.

Louis Olson, a lookout on the "Elder," testified the "Elder" blew one whistle when she was about three-quarters of a mile away from the "Kern," then she blew another, and at the time the "Kern" was about a point on the "Elder's" port bow. The "Elder" was about 1,000 feet from the "Kern" when the second whistle was blown. The response was to the second whistle. The witness says: "The first they blowed one whistle. Then they blowed one more—they didn't answer the first whistle; then they blowed one more and then they answered with two."

WOLVERTON, District Judge:

The question to be resolved is which of these two vessels was at fault in bringing on the [46] collision, or whether both are blamable for their part in

the affair. The following is a rough chart of the river and its shore lines at and near the place of collision:



"K" represents the place where the collision occurred. "C" is a designation for Cooper's Point, made by counsel in the examination of one of the

witnesses. It is claimed by libelant's counsel that Cooper's Point is approximately five-eighths of a mile above the place of collision, which is probably near the correct distance. The line from "C" to "K" [47] shows approximately the ship's course for vessels of the class and size of the "Elder." As they round Cooper's Point and pick up Waterford Light, they bear away from the Washington shore on or near the line indicated until they pass the point where the collision occurred. I speak of rounding Cooper's Point. As a matter of fact, the change in course is only slight, as the vessels run near the Washington shore for some distance above. The "Elder," on the night of the accident, according to the testimony of her officers, had just rounded or passed Cooper's Point and had straightened up, not on her regular course, but on a course a half-point to starboard of the "Kern," the "Kern's" presence in the river below having been discovered at that time, and the pilot intending to bear off the Washington shore opposite the "Kern" some 400 feet, which would leave the "Kern" to the "Elder's" port from 300 to 600 feet; thinking, as he says, he could go in through there with safety. It was then that the officers say they blew one whistle as a signal to the "Kern" that the "Elder" intended to pass to her starboard, the ship running nearly at full speed. This would put the distance of the "Elder" above the "Kern" approximately half a mile when the "Elder" gave the signal. She slowed up, her officers say, but continued on her course a half point to the starboard of the "Kern," and, getting no

response from the "Kern," she subsequently blew another whistle, a single blast as before. At this time Patterson, the pilot on the "Elder," puts his distance from the "Kern" at from 1,000 to 1,500 feet, and it was then, according to witnesses for the "Elder," that they got the first response from the "Kern." They [48] were not certain whether the response was a cross or a danger signal. The vessel was at once ordered hard astarboard and full speed astern. The "Elder" being constructed with a left-hand propeller, the effect of the execution of the order would be to throw her bow to port and her stern to starboard, thus giving her a curving course to port. The "Elder" was executing this maneuver when she struck the "Kern."

On the other hand, the officers and deck-hands of the "Kern" say they heard the first signal given the "Kern" by the "Elder," and that the "Kern" answered at once with the danger signal, four short blasts. Very shortly the "Elder" gave another signal, which was also answered as before, with four short blasts. The "Kern" was heading approximately downstream. Such being her position, the "Elder," if steering on her usual or the ship's course, would be approaching from an angle astern. This will be at once apparent from the above sketch. Moran, the pilot on the "Kern," thinks the "Elder" approached directly for the stern of the "Kern," as if she were going to split her up the center. The mate and the master concur in the view that the "Elder" was approaching, not directly from the stern, but heading for the "Kern's" starboard quar-

ter or midships. All the witnesses on the "Kern" agree that the lights of the "Elder"—port, starboard and masthead lights—were all plainly visible as she approached the "Kern" until after the "Elder" began swinging to port. It was almost at this instant that the collision took place, or so shortly after that it was difficult to estimate the time. In the course of her maneuver to get in between the barges constituting her tow, the "Kern's" helm had been thrown to port, and on observance [49] of the near approach of the "Elder" she was ordered full speed ahead. The effect of the execution of this order would be to throw her stern to port and bow to starboard, thus increasing her angle with the usual ship's course. Moran says she had begun to execute this maneuver, and had proceeded ahead 30 or 40 feet when the "Elder" struck her. The "Elder" struck her starboard quarter at an angle of about 34 degrees. This is a physical fact shown by the course of the "Elder's" bow as it extended into the hull of the "Kern."

Captain Church, in charge of the "Hercules," relates that while navigating his vessel upstream to pick up the empty barges, he exchanged the passing signal with the "Elder," and that the "Elder" signalled the "Kern" just as she was passing the "Hercules" below Cooper's Point, inside of 1,000 feet. First officer Hale on the "Hercules" lends corroboration to this. Captain Patterson's custom was to signal the vessel ahead when about half a mile distant. From these witnesses it would appear that the "Elder" sounded her first signal to the "Kern"

when approximately half a mile distant, and this I am constrained to believe to be the fact. However, the "Elder" may have been nearer, and possibly somewhat farther away. No implicit reliance can be placed upon the estimate of the witnesses on board the "Kern" as to how far distant the "Elder" was when she blew her first whistle, as they were looking into the darkness, without physical objects by which to determine the fact with relative accuracy. At the distance of a half-mile away, if the "Elder" kept her speed, say from ten to twelve miles per hour (she was probably running at a faster rate), she would reach the "Kern" in from $2\frac{1}{2}$ to 3 minutes, [50] the "Kern" being dead in the water. The "Elder," however, I am led to believe, slowed down, which would increase the time relatively. It is further probable that her speed was not greatly checked until the pilot's order to put her full speed astern was executed, as there is no evidence that her engines were backing, so that she was running at a stiff rate up to that juncture.

All the witnesses on the "Kern" speaking as to the fact, concur in the statement that the "Elder" was heading almost, if not directly, for the "Kern," for they saw all the "Elder's" running lights, which is a demonstration in itself and discredits absolutely the testimony of the officers on the "Elder" to the effect that she was running on a course having the "Kern" a half-point on her port bow. If she had been, the evidence would indicate that the "Elder's" green or starboard lights would have been shut out from the "Kern," and as the "Elder" approached

the angle would have been increased, more perfectly obscuring her green light. It is problematic as to just how near the "Elder" had approached the "Kern" when she blew her second whistle. The distance is variously estimated from 1,000 or 1,500 feet to very near at hand. Arneson says, "She was pretty close to us then." From either point of view, she kept her course until that time; that is, she was either running directly for the "Kern," or with the "Kern" one-half point on her bow; in my view, directly for the "Kern."

A thing which appears to be practically certain is that the "Elder" at this point put her helm hard astarboard, and reversed her engines to full speed astern, which gave her a curving course to port, and yet she collided with the [51] "Kern." From the expert testimony, it would seem that if she had been 1,000 feet distant when she began to execute the maneuver, she would probably have cleared the "Kern" and her tow, or stopped before reaching her. If within 500 feet, the result would have been problematical. Possibly she even then would have cleared the "Kern." This would make it appear that the "Elder" was not much, if anything, beyond 500 feet from the "Kern" when she began to execute her maneuver to port, and she might have been much less.

As to whether the "Kern" gave response to the first passing signal of the "Elder," there is a sharp conflict in the testimony. The officers of the "Kern," consisting of the pilot, first officer, mate, chief and assistant engineers, and a seaman, all con-

cur in saying they heard the response given to both the first and the second signal of the "Elder." Besides these witnesses, the captain of the "Hercules" and a fisherman testify that they heard all the signals—two from the "Elder" and two, consisting of four short blasts, from the "Kern," and the mate on the "Hercules" heard both responses. All the witnesses on the part of the "Elder" testifying to the fact say they did not hear any response whatever to the first signal of the "Elder." Applying the rule that the testimony of witnesses affirming that they heard or saw a thing is entitled to greater weight than the negative testimony of other witnesses who affirm that they did not hear or see it, the greater credence must be given to the testimony of libellant's witnesses.

As applicable to collision cases, it has been held that: [52]

"The established rule is that the testimony of officers and witnesses as to what was actually done on board their own vessel is entitled to greater weight than that of witnesses on other boats, who judge or form opinions merely from observation."

The *Alexander Folsom*, 52 Fed. 403, 411.

See also *The Alberta*, 23 Fed. 807, 810; *The Sam Sloan*, 65 Fed. 125, 127.

Further than this, I am impelled to the firm conviction that the "Kern" gave prompt response to the first signal of the "Elder" with four short blasts of her whistle; and not only this, I am of the opinion that the officers of the "Elder" testifying, or at least one or more of them in authority, did hear such

response from the "Kern," and that the "Elder" is chargeable with positive knowledge that it was given. I base this latter deduction the more readily upon the testimony of the captain and mate of the "Hercules" and the fisherman, who were even less advantageously situated for hearing such signal than the officers of the "Elder."

Now, to apply the rules of navigation, which constitute a cardinal factor in determining the fault and to which of the two vessels it is attributable. As a preliminary statement to the rules adopted by Congress approved June 7, 1897, relating to the prevention of collision upon certain harbors, rivers and inland waters of the United States, it is premised that a vessel is under way when she is not at anchor or made fast to the shore or ground. According to this, the "Kern" was a vessel under way. An overtaking vessel "shall keep out of the way of the overtaken vessel." Art. 24. [53]

"When steam vessels are running in the same direction, and the vessel which is astern shall desire to pass on the right or starboard hand of the vessel ahead, she shall give one short blast of the steam whistle, as a signal of such desire, and if the vessel ahead answers with one blast, she shall put her helm to port; or if she shall desire to pass on the left or port side of the vessel ahead, she shall give two short blasts of the steam whistle as a signal of such desire, and if the vessel ahead answers with two blasts, shall put her helm to starboard; or if the vessel ahead does not think it safe for the vessel

astern to attempt to pass at that point, she shall immediately signify the same by giving several short and rapid blasts of the steam whistle, not less than four, and under no circumstances shall the vessel astern attempt to pass the vessel ahead until such time as they have reached a point where it can be safely done, when said vessel ahead shall signify her willingness by blowing the proper signals. The vessel ahead shall in no case attempt to cross the bow or crowd upon the course of the passing vessel."

Rule VIII.

"In obeying and construing these rules due regard shall be had to all dangers of navigation and collision, and to any special circumstances which may render a departure from the above rules necessary in order to avoid immediate danger."

Art. 27.

In view of these rules, it is clear that it was the bounden duty of the "Elder" to keep out of the way of the "Kern." Having heard the response to the "Elder's" first passing signal, the duty was imposed upon the "Elder" not to attempt to pass the [54] "Kern" until such time as it could be safely done, at which time the vessel ahead is required to signify her willingness by blowing the proper signal. This makes the vessel ahead the judge as to when the overtaking vessel can safely pass. The "Elder" slowed down, but kept her course—this in face of the fact that she was steering straight for the "Kern," and approaching her at a rapid rate. Con-

tinuing in this way, the "Elder" again asked permission to pass. The "Kern" again refused; and then it proved too late to avoid the collision, for it occurred in spite of the energetic efforts of the "Kern" to prevent it.

The fact that the "Elder" struck the "Kern" at an angle of 34 degrees in no way conflicts with the theory that the "Elder" was steering straight for the "Kern." It is altogether probable that the "Kern" was pressing ahead at the instant with her helm aport, which carried her stern somewhat to port, and the "curving" motion of the "Elder" would naturally bring her into collision at some angle. The "Elder" should have been eagerly mindful of her rapid approach to the "Kern" on the course she was steering, and should have avoided running so near to the latter as to put her in peril of a collision. Under the circumstances, she was at liberty to depart from the letter of the rules and steer to the starboard of the "Kern," notwithstanding the refusal of the latter to let her pass—this to avoid "immediate danger." Art. 27, Sup. See *The North Star*, 151 Fed. 168, 172.

The expert witnesses, including Moran and Anderson of the "Kern," seemed to be of the view that if the "Elder" had steered to starboard at a distance of 1,000 feet, or even 500, she would have avoided the "Kern." She would have avoided her absolutely, and without question, if she had been running on [55] the course of a half-point to port of the "Kern" when the first signal was given, and continued on that course. Furthermore, if she had so continued until she gave the second signal, the prob-

abilities are that she would by that time have so indicated her course to the "Kern" that the latter would have signified permission to pass as requested.

Supposedly at that time such would have been the case. Counsel for respondent suggest that the response given by the "Kern" indicated, not only that the "Kern" was in jeopardy, but that it was not safe for the "Elder" to pass on any course, to starboard of the "Kern" or between her and the Washington shore. The clear reply to this suggestion is that the "Elder" knew the river, and knew also that the "Kern" was engaged in navigating barges downstream, and it is not at all probable that she was so misled by the signals of the "Kern." Such is my conviction. But if it be that the "Elder" did not hear the response to her first signal, it was a grave fault to approach so near to the "Kern" on the course she was running as to jeopardize the situation. She should either have done what she did do in the extreme, or have departed from the rules and gone to starboard of the "Kern." In either event, the collision would not have happened. This would be the case whether she knew the "Kern" was "dead in the water" or moving. The emergency was one which she ought to have been on her guard about. She knew that the "Kern" and "Hercules" were in the habit of exchanging tows in the river, and she met the "Hercules" almost at the very time that she sounded her first signal to the "Kern," and ought to have known that the "Kern" was likely to be engaged in the very thing that she was trying to do at the time, namely, to pick up her tow. [56]

I do not deem that it was a contributing fault on the part of the "Kern" that she was picking up her tow in the fairway. The *James T. Easton*, 27 Fed. 464. She certainly had a right to navigate with her tow in the fairway, and I have been cited to no authorities holding that she was remiss in using the fairway to make fast to her tow.

It is stoutly urged that the "Kern" was rendered in fault because Moran refused permission to the "Elder" to pass, under a mistaken interpretation of Rule VIII. Moran watched to ascertain whether the "Elder" changed her course after signaling for permission to pass, before he acted, and, observing no change, he refused permission. He candidly concedes that his impression of the meaning of the rule was that it required the "Elder" to change her helm before the assent should be given. In this he was in error, for the rule requires the contrary, that is, that the overtaking vessel shall change her course upon receiving assent from the overtaken vessel—not before, but after receiving such assent.

The question is a serious one, and not free from difficulty; but I have concluded that the mistake of Moran was not the proximate contributing cause of the collision. I am satisfied that Moran did not refuse his consent to the "Elder" to pass arbitrarily, or with any wanton purpose of vexing her or impeding navigation. He assumed for his own safety that he ought to withhold his assent because the "Elder" was heading directly for his boat, upon the mistaken idea that she ought to have changed her course at once after signalling for permission to pass the

“Kern.” The “Elder,” nevertheless, should have heeded the signal from the “Kern,” and if she had, and had acted with the same energy that she did on getting the second [57] signal from the “Kern,” there would have been no collision. The only damage that either boat would have sustained would be some delay to the “Elder.” Thus it is manifest that the proximate cause of the collision was the omission of the “Elder” to take prompt action upon getting the response from the “Kern,” to avoid if possible any contact with the latter. I reach this conclusion the more readily from the circumstance that the “Elder” was the overtaking vessel, charged not only with the duty of keeping out of the way of the “Kern,” but also with the burden of showing that the fault of the collision was with the “Kern.” The reasoning of Betts, District Judge, in *The Governor*, Fed. Cas. No. 5645, is apposite:

“If the ‘Worcester’ and the ‘Governor’ had been running in opposite directions, the collision might, probably, have been deemed to be so far the result of mere casualty and misadventure as to leave each vessel to bear for herself the consequences of the accident falling upon her. But the fact that they were running in the same direction, the one astern of the other, imposed upon the rear boat an obligation to precaution and care which is not chargeable to the same extent upon the other. In the light of this principle, the circumstances of the present case manifestly cast the burden of proof upon the ‘Governor.’ She was astern, and was seeking to run

past the 'Worcester.' She had a right to the advantage of her superior speed, and under such circumstances it would have been tortious and blameable conduct on the part of the 'Worcester' designedly to intercept the 'Governor,' to crowd her off, or to baffle her in that effort. But it devolves upon the 'Governor' to show the prudence of her own conduct, as well as to prove negligence or misconduct on the part of the [58] 'Worcester.' It was not the duty of the latter boat to veer from her course so as to open a passage for the 'Governor,' or to lend her any facility in aid of her purpose to pass. We may censure any rigid adherence to strict right by which one competing boat interposes embarrassments in the way of her competitor, and may regret the want of a magnanimous and liberal course of conduct which might relieve a vessel of superior speed and endeavoring to get ahead, from delay or difficulty in accomplishing that object. But the Court is only empowered to adjudicate the legal rights of the one and the responsibility of the other."

See also the reasoning of the Court in *The Fontana*, 119 Fed. 853, 856.

This leaves but one other contention to dispose of, which relates to the fact that the "Kern" had no designated lookout in service at the particular time. The absence, however, of such a lookout was void of any causative effect in bringing on the collision. The officers in charge of the "Kern" discovered in due time the approach of the "Elder," and the action

taken was in pursuance of such discovery, and of the movement and signals given by the "Elder."

I hold therefore that the collision was due solely to the fault of the "Elder," and that she must stand accountable for whatever damage was inflicted upon the "Kern." The amount of the damages must be ascertained from testimony yet to be adduced.

Filed Feb. 3, 1913. A. M. Cannon, Clerk. [59]

And afterwards, to wit, on the 12th day of April, 1912, there was duly filed in said court the Testimony taken before the Court, in words and figures as follows, to wit: [60]

In the District Court of the United States for the District of Oregon.

IN ADMIRALTY.

COLUMBIA CONTRACT COMPANY,

Libelant,

vs.

The Steamship "GEORGE W. ELDER," etc.,

Respondent.

Proceedings Had February 5-8, 1912.

IRA A. CAMPBELL and C. E. S. WOOD,
Attorneys for Libelant.

WILLIAM DENMAN and C. W. FULTON,
Attorneys for Respondent.

C. E. WOLVERTON, Judge.

Portland, Oregon, February 5, 6, 7, 8, 1912.

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Mr. DENMAN.—Your Honor, it has been stipulated that all we shall try at this time, before your Honor, with your Honor's consent, is the question of liability. The question as to damages, involving a considerable amount, will be reported thereafter to a master, and that evidence offered as the parties produce it. That, I understand, is the stipulation.

COURT.—All the evidence as to damages shall be taken before a master?

Mr. DENMAN.—Unless there may be some incidentally at this time, but the question before the Court now is the question of responsibility, and not the question of amount of responsibility.

Mr. CAMPBELL.—Except for this one fact: We did that in view of your Honor's going to San Francisco, we understood, on the 10th, and Col. Wood was under the impression that this case must be finished by Friday evening, and in view of the fact that we will probably have all we can do to get the question of liability alone, we have stipulated to take up only that at this time. If, however, we find we are finishing this case so as to have an opportunity to go into the element of damages, I suppose counsel will be willing to take it up at that time.

Mr. DENMAN.—Well, I would like to have the matter decided now. We have to get together our witnesses for that; it is an entirely separate thing; involves what was done with the vessel subsequently and at the yard, and I think it will be safer if we now stipulate to turn that over to a master; it is a detail matter—purely a matter of accounting. [62]

COURT.—The Court can give you the whole week, if necessary. I would rather get through by Friday evening, if I could.

Mr. WOOD.—We will take that matter up among ourselves at the conclusion of to-day's session. [63]

Testimony of Daniel Kern, for Libelant.

DANIEL KERN, a witness called on behalf of the libelant, being first duly sworn, testified as follows:

Direct Examination.

Questions by Mr. CAMPBELL:

Mr. Kern, what, if any, position did you hold with the Columbia Contract Company, at the time the "Elder" ran into the "Kern"?

(Testimony of Daniel Kern.)

A. President and manager.

Mr. DENMAN.—If your Honor please, we agreed to the sequestration of the witnesses. I want to have with me the master who was on board at the time, to guide me in cross-examination—the pilot, but other than that, I will excuse all my other witnesses. I request sequestration of the witnesses, and under the practice, as I have known it, you are allowed to have the master with you to guide you in the trial of the case; other witnesses must be excluded.

Mr. WOOD.—No objection, except with regard to Mr. Kern, who is only the corporation manager, and without personal knowledge of the facts, and we also want the master of the “Hercules”—of our two boats, at the same time. All our witnesses will be excluded, except Mr. Kern, who is the corporation manager, and the master and pilot of the “Kern.”

Mr. DENMAN.—These two witnesses are witnesses we desire to cross-examine on the occurrences there, and we desire the cross-examination of the one to be not in the presence of the other.

Mr. WOOD.—Which two?

Mr. DENMAN.—The master and the pilot of the “Kern.” [64]

Mr. WOOD.—Then we would like to have with us the pilot of the “Kern.”

COURT.—Very well; all the other witnesses will leave the courtroom, and with the exception of the two named, will remain outside until they are called.

(Testimony of Daniel Kern.)

Mr. CAMPBELL.—You don't want to include in that Captain Crowe, who was not there at the time?

Mr. DENMAN.—No.

Q. Who owned the "Daniel Kern" on the 18th day of August, 1909, at the time of the collision?

A. The Columbia Contract Company.

Mr. CAMPBELL.—That is all.

No cross-examination.

Witness excused. [65]

Testimony of Michael Moran, for Libelant.

MICHAEL MORAN, a witness called on behalf of the libelant, being first duly sworn, testified as follows:

Direct Examination.

Questions by Mr. CAMPBELL.

Were you on board—How old are you, Captain?

A. I was born in 1863.

Q. What, if any, license did you hold as a master mariner?

A. Master and pilot's license, and branch pilot's license. Well, master and pilot's license for inland waters, for the Willamette and Columbia rivers, up to the time of that collision.

Q. How long have you held a master's license?

A. Well, nine years, eight or nine years, I believe—ten.

Q. How long during that period have you acted as master of steamers on the Columbia River?

A. Pretty near all the time—master and pilot.

Q. How long have you acted as pilot on the river?

(Testimony of Michael Moran.)

A. Well, since last March.

Q. Well, I mean prior to this collision had you acted as pilot?

A. Oh, prior,—well, somewhere around six or seven years—

Q. On what class vessels?

A. I think six or seven years; I am not sure.

Q. On what classes of vessels?

A. Well, on the tug “Sampson,” the “Vosburg,” the cruiser, and on the “Daniel Kern”—pilot.

Q. Were you on board the “Daniel Kern” at the time the “Elder” ran into her? A. Yes, sir. [66]

Q. Who was in charge of the navigation of the “Kern”? A. At the time of the collision?

Q. Yes. A. I was.

Q. Where were you at the time of the collision?

A. I was right on the bridge of the “Kern.”

Q. What do you mean by “the bridge”?

A. Well, outside the pilot-house; right by the side; the starboard side of the “Kern”—bridge.

Q. I will show you a photograph and ask you whether or not that is a picture of the “Daniel Kern” as she was the night of the collision. A. Yes, sir.

Q. Now, where is her pilot-house on that photograph? A. Right there, sir. (Indicating.)

Mr. CAMPBELL.—I will offer this photograph in evidence.

Mr. DENMAN.—No objection.

(Photograph marked “Libelant’s Exhibit 1.”)

Q. What time did you go on watch, Captain?

A. At twelve-ten.

(Testimony of Michael Moran.)

Q. 12:10. And where had—what had the “Kern” been doing up to twelve o’clock?

A. She was towing light barges up the river, under way—steaming up the river with three light rock barges.

Q. What are those barges?

A. Three rock barges; we was on our way up from Ft. Stevens.

Q. What were the barges used for?

A. For handling rock—towing the rock from Fisher’s Quarry down to Fort Stevens.

Q. Where is the quarry located? [67]

A. Fisher’s Landing—up the Columbia River, on the Washington side.

Q. Just describe to the Court the way the business of transferring the rock from the quarry to the jetty is conducted.

A. Well, we—the “Hercules,” as a rule, takes the three loaded barges from Fisher’s Landing on the Washington side of the Columbia River, halfway down the river until whatever time she meets the “Kern” or the “Sampson,” whichever boat is towing, and they exchange tows wherever they meet in the river; and whenever they meet, why the boat that is going upstream stops the three light barges as much out of the way as they possibly can—out of the channel, and they leave them there, while the other boat does the same thing with the loaded barges, and the boat that lets go the light barges gets out from between them, and goes around and hooks on to

(Testimony of Michael Moran.)

the loaded barges; that is what we term exchanging tows.

Q. I will hand you a photograph and ask you what it is, if you know.

A. That is the steamer "Hercules."

Q. What doing?

A. Going down stream with loaded barges.

Mr. CAMPBELL.—I will offer this in evidence.

(Marked "Libelant's Exhibit 2.")

Q. What is this other photograph I hand you?

A. That is the "Daniel Kern."

Q. What doing?

A. Going downstream with loaded rock barge.

Mr. CAMPBELL.—I will offer this in evidence also.

(Marked "Libelant's Exhibit 3.")

Q. Where is the quarry located at which the barges are loaded? [68]

A. Located five or six miles above Vancouver on the Washington side of the river.

Q. Will you state whether or not it is customary for the tug which takes the loaded barges from the quarry to push them all the way to Ft. Stevens?

A. Is it customary? It wasn't at that time; no, sir.

Q. Was it customary at that time for the tug bringing the empty barges up from Ft. Stevens to take them all the way up to the quarry? A. No, sir.

Q. At what point on the river was the exchange of the barges generally made?

A. At any point from Oak Point down to Water-

(Testimony of Michael Moran.)

ford, or Westport, for that matter; generally wherever they met; sometimes one boat or the other may be a little behind, and they keep on going until they meet each other.

Q. How long had you been pilot on the steamer "Kern" prior to the collision?

A. About three weeks, I guess.

Q. Three weeks. During all that time, where was it customary to exchange tows with the "Hercules"?

A. Well, anywhere between Westport Light and Oak Point.

Q. Now, where is Westport Light?

Mr. DENMAN.—Pardon me, Mr. Campbell. Let me ask, at this time, whether this word "customary" which you are using has reference to the practice of this company.

Mr. CAMPBELL.—Yes, certainly.

Mr. DENMAN.—That is all you mean?

Mr. CAMPBELL.—By this company; no other company is on the river, towing these rock barges.
[69]

Mr. DENMAN.—That is all right—not a general custom.

Mr. CAMPBELL.—There is no general custom; there is no other company engaged in this business; this company alone is engaged in this line of business. I am asking now with reference to where these two tugs of the Columbia Contract Company exchanged tows or barges.

COURT.—Very well.

Q. I will hand you this chart, Captain, and ask you

(Testimony of Michael Moran.)

whether or not that shows the location of the collision.

A. Yes, sir; it shows the exact—the exact position—place the collision occurred, right there.

Mr. CAMPBELL.—If there is no objection, I will offer this in evidence. It is a hydrographic chart.

(Marked “Libelant’s Exhibit 4.”)

Q. Now, can you show me, Captain—between what points did you say it was customary to exchange?

A. Well, anywhere between—anywhere between Westport Light and Oak Point. Sometimes we have to go further up the river; depends on whether one boat or the other should be delayed on either end.

Q. Can you mark on this chart Oak Point?

A. Right in here. Oak Point is about in here somewhere.

Q. I will mark on the chart Oak Point. How far is it above Eagle Cliff?

A. Oh, about three or four miles, I guess; three and a half miles. That is Eagle Cliff.

Q. Where is Bunker Hill with respect to Oak Point?

A. That is above it about a mile or a mile and a half, above Oak Point.

Mr. FULTON.—What is this in here?

A. That is a sawmill. [70]

Q. Where, with reference to Grim’s Island, did you usually exchange your barges at the uppermost point of the river?

A. That would be up above here, sometimes go up as high as Walker’s Island.

(Testimony of Michael Moran.)

Q. How far above Grim's Island?

A. Walker's Island would be probably four miles above Grim's Island.

Q. Is Westport shown on this chart?

A. Right here; Westport ought to be right in here somewhere.

Mr. CAMPBELL.—You may resume the chair, Captain. Westport is not shown on that chart. I thought the chart ran down farther.

Q. What time did you say you came on watch, Captain?

A. I came on deck about ten minutes past twelve—twelve-ten.

Q. Had you at that time let go of the light barges.

A. No, sir.

Q. Did you afterwards let go the light barges?

A. Yes, sir.

Q. At what point, if you know?

A. About at Cooper's Point; a little above Cooper's Point—probably right abreast. I stopped the ship right abreast Cooper's Point—stopped the engine right there.

Mr. CAMPBELL.—If the Court please, this is an enlarged chart of this same section of the river which was furnished me by United States Engineers. I don't want to call them to identify the chart unless counsel insists.

Mr. DENMAN.—It isn't necessary, Mr. Campbell. We may want to call them to explain some of the details of it, but no question about the accuracy of the drawing so far as it goes.

(Testimony of Michael Moran.)

Mr. CAMPBELL.—I offer this enlarged chart in evidence.

(Marked “Libelant’s Exhibit 5.”) [71]

COURT.—Will you let the witness locate Cooper’s Point on that map? (Indicating Libelant’s Exhibit 4.)

Mr. CAMPBELL.—Yes.

Q. Will you locate Cooper’s Point on this?

COURT.—And mark it with some designation.

A. Cooper’s Point is right here.

Q. Point marked with capital “C”?

A. Yes, that point right here.

Q. Is that the point?

A. Yes, that is Cooper’s Point.

Q. And will you also locate the Waterford Light on that chart?

A. Waterford Light stands right in here. Right that point is where Waterford’s Light is.

Q. The point where I marked “W”?

A. Yes.

Q. What is the black spot marked there just below the light? A. That is the Waterford canneries.

Q. Is Waterford Cannery marked “Waterford Canneries” on the chart?

A. “Waterford Fishery,” I believe, it is marked.

Q. Waterford Fishery. Now, will you locate upon this enlarged chart marked “Libelant’s Exhibit 5,” Cooper’s Point, Captain?

Mr. FULTON.—It is marked there, isn’t it?

A. There it is, right there.

Q. Marked Cooper’s Point? A. Yes.

(Testimony of Michael Moran.)

Q. And what is the star just below Cooper's Point—what does that represent?

A. That is Waterford Light.

Q. Waterford Light.

COURT.—That is marked Waterford Light, is it?

A. Stake Light. [72]

Q. It is marked Stake Light, is it? A. Yes, sir.

Q. Mark it with a "W," too. A. Yes, sir.

Q. Now, Captain, where did you drop the light barges?

A. Well, a fraction above Cooper's Point and well over towards the Oregon shore.

Q. Where, with respect to the main channel, the main steamship channel?

A. Well, we were over to the Oregon shore—the Oregon side of the steamship channel, probably an eighth of a mile—between an eighth and a half—quarter of a mile practically.

Q. What time was that?

A. That was about 12:30 or 12:35.

Q. And what did you do after you let go the light barges?

A. Why, turned right around and went downstream to where the loaded ones was opposite the Waterford Light.

Q. And how far offshore, off the Washington shore, in your judgment, were the loaded barges at the time?

A. Well, I should judge they were off from 1,000 to 1,200 feet.

Q. And where with respect to the Waterford

(Testimony of Michael Moran.)

Light? A. Right abreast of it.

Q. In what position were the loaded barges lying at the time you went to them?

A. They were lying heading towards the Oregon shore.

Q. How were they—in what position with respect to each other were the rock barges—the loaded barges?

A. Well, they were made up, you know, as a regular tow alongside and one ahead—one in the middle.

Q. Where did you pass the “Hercules” after you let go the light barges?

A. Well, between Cooper’s Point and the Waterford Light.

Q. And what was the “Hercules” doing at that time? [73]

A. She was proceeding on up to take hold of the light barges.

Q. What was the first intimation that you had that the steamer “Elder” was approaching?

A. Not until I heard his one whistle.

Q. Where were you at the time?

A. Laying right at the barges—laying, standing still.

Q. How were your barges fastened or moored?

A. Well, they were moored right alongside each other; only one is generally out ahead.

Q. That isn’t what I meant. Were they anchored or moored to the bottom at all?

A. No, sir; they were just laying still there.

(Testimony of Michael Moran.)

Q. What was the condition of the tide and current?

A. I should judge about slack water there at that time—low water slack; it probably was low water slack or first of the flood at the time the collision occurred.

Q. Do you recall at this time? A. What?

Q. Do you recall at this time what the water was?

A. Yes, I remember likely, will say low water slack, or first of the flood, if anything.

Q. Did you observe anything as to the condition of the current in the river?

A. No, sir; nothing unusual.

Q. How, if at all, were the barges moving at the time that you came up to them?

A. They weren't moving any at all that I could notice. Of course, I wasn't—just simply heading for the Oregon shore and appeared to set still there, you know. If moving at all they were moving that way, but I couldn't notice it. [74]

COURT.—Those were the loaded barges?

A. Yes, sir.

Mr. CAMPBELL.—If the Court please, I should like to use this table, if I can, with the models. When the models are put in position, I want the positions marked on this drawing paper so that we may have a permanent record.

COURT.—Very well.

Q. Captain, if you will just come down here, I think we can get at this better. Now, assume that the line that I draw across this paper, which I mark

(Testimony of Michael Moran.)

“Oregon shore” is the Oregon shore, simply for the purpose of giving us direction. I want you to take these models and show me, if you can, the position in which the barges were at the time that you approached them.

Mr. CAMPBELL.—First, I will offer the paper in evidence.

(Marked “Libelant’s Exhibit 6.”)

Q. I want to know first, whether these models bear any resemblance to the barges themselves?

A. Just exactly, as near as I can—

Mr. DENMAN.—They are drawn to scale, are they?

Mr. CAMPBELL.—The barges are to scale.

Mr. DENMAN.—Both the barges and the tug are to scale—and the steamer?

Mr. CAMPBELL.—Yes.

Q. Now, Captain, by means of these models, I want you to show me the position of the barges with respect to the Oregon shore at the time you approached to make fast.

COURT.—Which is downstream and which is up?

A. This is downstream according to that (indicating right-hand side of the paper.)

Mr. CAMPBELL.—We will consider this second line I have [75] marked as the Oregon shore. I will erase the other. In the first place I want to know the position of the barges as you approached them to make fast.

A. (Witness arranges models.)

(Testimony of Michael Moran.)

Q. First you saw them now with reference to the Oregon shore?

A. Might have been swung around there.

Q. Now, will you take your pencil, or may I with consent of counsel, just draw the outline?

A. I will hold them down while you do it. (Mr. Campbell traces outlines of boats.)

Q. Now, this I mark "downstream" is downstream, is it? A. Yes, that would be downstream.

Q. Indicated by the arrow.

Mr. DENMAN.—Now, this drawing, as I understand it, does not purport to represent distances. No scale of distance. Simply the angle to shore.

Mr. CAMPBELL.—This drawing purports to show just what I ask for, the position with respect to the Oregon shore.

Mr. DENMAN.—Does not give distance. I wanted to make sure.

Mr. CAMPBELL.—No, no, I am not going into that.

Q. What did you do with your tug after you left the light barges?

A. Well, I left the light barges upstream and just turned around the starboard helm and came downstream and went up to these light barges and found them in that position.

Q. Did you receive any whistles from the "Elder"? A. Not at that time.

Q. Did you afterward receive any whistles from the "Elder"? A. I did.

Mr. WOOD.—You said with reference to the light

(Testimony of Michael Moran.)

barges in this position.

Q. Did you mean the light barges or the loaded barges? [76]

A. These represent the loaded barges when I got to them.

Q. These barges represent the loaded barges to which you went? Now, where were you at the time that you heard the "Elder's" first whistle?

A. I was in the pilot-house of the "Elder"—the "Kern."

Q. Where was the "Kern"?

A. The "Kern" was lying right here.

Q. Now, will you take the model of the "Kern" and place it, with respect to these barges, in the position it was at the time you heard the "Elder's" first whistle?

A. Yes, sir; there is about the way she was (placing model).

Q. I want you to place it just where she was, yourself.

A. That is about where. She might have been a little more head.

Q. Place it just where you think—not might have been a little more head. Give us your idea about it.

A. Right here. (Mr. Campbell outlines the model of "Kern.")

Q. At the time that you heard the first whistle of the "Elder," what lines, if any, did you have out from the "Kern" to the barges?

A. Just in the act of getting one head-line out from the port bow—just had got it out, in fact.

(Testimony of Michael Moran.)

Q. From the port bow of what?

A. The "Kern."

Q. To what? A. To this barge here.

Q. To which barge is that?

A. The upstream barge.

Q. Well, how else do you distinguish the barge?

A. The port barge, I would call it.

COURT.—Have those barges names?

A. No, sir; they are numbered.

COURT.—That is the port barge with reference to your ship?

A. Yes, sir; that would be the port barge with reference to my ship. [77]

Mr. WOOD.—In references to each other facing the masts, it would be the left-hand barge.

Mr. CAMPBELL.—(Marking outline of barges on Exhibit 6.) Have I correctly marked the barges—starboard barge, port barge, center barge and "Kern"? A. Yes, sir, so far as I know.

Q. Now, will you take the pencil, Captain, and draw me upon this chart—draw the line which you say was passed from the "Kern" to the port barge?

A. Yes, sir, it would be from here—from the chock on the port bow to—

Q. You draw it, go ahead. Take your hand out of your pocket and put some life in it.

A. There you are (drawing).

Q. Now, just mark the line. Mark it "line." (Witness does so.) Now, when you were in that position, what signal, if any, did you get from the "Elder"? A. One whistle.

(Testimony of Michael Moran.)

Mr. DENMAN.—That is leading. This is the very essence of the case, when these signals came. Ask what happened.

Mr. CAMPBELL.—I have just had him indicate the position of the vessel, on the chart, when he heard the first whistle from the “Elder.” Now I ask what whistle he heard when he had the boat in that position. A. I heard one whistle.

Q. Where were you standing at the time you heard the one whistle?

A. I was standing in the pilot-house looking out of the window forward.

Q. Which side of the pilot-house?

A. The starboard side, or where—the starboard side of the pilot-house that would be. [78]

Q. What did you do?

A. I went out to the door and looked astern to see where the whistle came from.

Q. Which door did you go out of?

A. The starboard door of the pilot-house.

Q. And what did you see?

A. Well, I looked out and saw the “Elder”—well, now, I didn’t know who she was at first, but saw a ship—steamer—vessel coming with all lights right at me, and appeared to be a short distance away from me, as I thought.

Q. What did you do then?

A. Well, I didn’t see—I noticed to see if any change in her course and I didn’t see her alter her course or shut out the signal lights, so I went in and gave four short blasts of the whistle.

(Testimony of Michael Moran.)

Q. What did you intend to convey by four short blasts, if anything?

Mr. DENMAN.—I object to the question as going to the intention of the witness. The blasts had a definite meaning.

Mr. CAMPBELL.—That is the meaning I was after.

Q. Where were you at the time you gave the four blasts, Captain?

A. I was in the pilot-house where the whistle string pulls. I went in the pilot-house—I went back in the pilot-house, you know, after I decided he was heading right for me without changing his course.

Q. When, with respect to the time that you heard the first whistle from the “Elder,” did you give the four short blasts to which you refer?

A. Oh, probably a second or so. Just as I—just watched the “Elder” and at the same time went to the pilot-house and [79] didn’t notice whether she changed her course or anything—her signal lights—and I made up my mind she was coming right for me, going to run me down. My first thought was—

Q. Did you make any record of the intervals of time— A. No, sir, I did not.

Q. —which transpired between the various incidents leading up to the collision? A. No, sir.

Q. What did you do after you heard—after you blew the first four blasts of your whistle?

A. I jumped outside again to watch the “Elder.”

Q. Where did you go outside?

(Testimony of Michael Moran.)

A. On the starboard side.

Q. Where to on the starboard side?

A. Starboard railing on the side of the bridge.

Q. Can you show me upon this photograph marked Exhibit 1? A. Yes, I came right out here.

Q. Will you put a cross upon that place?

COURT.—That is the instream side?

Mr. CAMPBELL.—Near the Washington side.

COURT.—The instream side?

Mr. WOOD.—The downstream side from which the “Elder” was approaching—no, the upstream.

COURT.—The “Elder” was approaching from the rear?

A. Yes, the “Elder” was coming downstream.

Mr. CAMPBELL.—Just as though passing her, the “Elder” going down. This is the Washington and this is Oregon.

Mr. FULTON.—In other words, the “Elder” was supposed to be back up here, up this way.

Mr. CAMPBELL.—I will just mark here the Washington shore [80] to indicate the direction, but without reference to distance.

Q. Now, Captain, what, if anything, happened after you went out to the starboard railing of the “Kern”?

A. Well, I stood there for a few seconds and I got one whistle from the “Elder.”

Q. What was the “Elder’s” course with respect to what had been before?

A. Just exactly the same. I couldn’t notice—

(Testimony of Michael Moran.)

Q. What lights, if any, could you see at that time on the "Elder"?

A. Saw the green lights—red light, and her mast-head light.

Q. What lights, if any, had you seen on the "Elder" when you heard her first whistle?

A. Saw the same lights, port and starboard lights, red, green and white lights, masthead light.

Q. What change, if any, had there been in the position of the lights of the "Elder" between the first and second whistles which she blew?

A. None that I could notice.

Q. How, in your judgment, was she heading at that time with respect to your boat?

A. She was heading right for me.

Q. What did you do after you received her second blast?

A. Well, she was getting so close that I jumped to the whistle as quick as I could and gave them four short blasts—gave the danger whistle.

COURT.—That is the danger signal?

A. Yes, that is the danger signal.

Mr. CAMPBELL.—Provided by statute, not less than four short blasts.

Mr. DENMAN.—But note, not four. Not less than four. There may be a question arise there because four signals has another definite meaning. [81]

Mr. CAMPBELL.—But four signals, you will admit, is the danger signal?

Mr. DENMAN.—It may be or it may not be.

Q. What did you do, Captain, after you blew the

(Testimony of Michael Moran.)

second series of four short whistles?

A. I jumped outside again to watch the "Elder."

Q. And where was she then?

A. She was then coming right head-on.

Q. What position, if any, did you—what change, if any, did you note in her position at that time?

A. None at the time I went out, but I waited a while and I noted she was swinging about her head to port, and I concluded he was backing; he was then about twenty feet away.

Q. What did you do?

A. Well, the bell is right by me and I rang my vessel full speed ahead as soon as I noticed his boat swinging away from me which the rules give me that privilege to do, trying to avoid a collision.

Q. What bell did you give?

A. Full speed ahead.

COURT.—With your ship?

A. Yes, sir.

Q. And what was the position of your helm when you rang full speed ahead?

A. My helm was aport at that time.

Q. Which way would that direct the course of your vessel?

A. Swing towards the Washington shore.

Q. And what with the stern of your vessel?

A. Swing towards the Oregon shore.

Q. And where would that swing it with respect to the lights on the "Elder"? [82]

A. Would swing the "Elder" across on my star-board quarter.

(Testimony of Michael Moran.)

Q. What do you mean by that?

A. Well, swing her around—swing the “Elder” more on my starboard quarter.

Q. How far distant, Captain, in your judgment, was the “Elder” from the stern of your vessel when you rang full speed ahead?

A. Pretty close; 25 or 30 feet, probably. Of course, I couldn’t say exactly, but I thought I had time to get clear of her so she wouldn’t have collided with me.

Q. How long an interval elapsed between your first four blasts of the whistle and the second one blast of the whistle of the “Elder”?

A. Oh, a few seconds, not very— Of course, I could not say; only a short time anyway—very short.

Q. What time elapsed between the “Elder’s” second blast and your four blasts of the whistle—your second four blasts?

A. Well, it was no time at all; just as quick as I could get in and blow them—probably a second or so.

Q. Where did the “Elder” strike you?

A. Took us on the starboard quarter.

Q. And what did you do after she struck you?

A. Well, I just—all I could do was to stay there and hold her true.

Q. What did you personally do, I mean?

A. Me, I just stayed right there.

Q. Stayed right there?

A. Stayed right on the bridge.

Q. About how long did you remain on the bridge?

(Testimony of Michael Moran.)

A. Oh, fifteen or twenty minutes before she sunk; until the "Hercules" came down and took us off.

[83]

Q. What, if any, effect did the striking of the "Elder" have upon the "Kern"?

A. Well, slough her around, you know, slough her heading towards the Washington shore.

Q. What did it do with the barges?

A. The head-line came tight and it swung the barges right head upstream.

Q. What do you mean by head-line?

A. This head-line I had to this port barge.

Q. The line you marked? A. Yes, that is right.

Q. What did it do with that?

A. Dragged the barges up and this barge here struck her right here—right alongside the port side on the "Kern." Swung right alongside the port side with head upstream.

Q. How, far, in your judgment, had the "Kern" moved ahead between the time that you rang for full speed ahead and the moment of the collision?

A. Well, she didn't move very far because this line became tight immediately—guess approximately 20 feet or so.

Q. Did you measure the distance at the time?

A. No.

Q. What kind of a night was it?

A. Dark, starlight night with clear atmosphere, calm with no wind.

Q. Will you show me by means of the model of the "Elder" the position in which you judge her to be

(Testimony of Michael Moran.)

at the time that you gave the full speed ahead signal to the "Kern"?

A. Show it by this diagram here?

Q. Yes.

A. Well, I should think she was about like that.

[84]

Q. I want merely the direction. I don't want distance. I merely want direction.

A. As near as I could see from looking from up here, the starboard side of the bridge, this is the way she appeared to me.

Q. I want your judgment about it. Is that where it is? A. As near as I could judge.

Mr. CAMPBELL.—(Drawing.) Ship marked "Elder" on this drawing.

Q. Now, I want you to take the barges and the model of the "Kern," and show me the position in which the barges—the relative position of the barges and the "Kern" immediately after the "Elder" struck you, so as to show how their positions had been affected by the blow of the collision.

A. I understand you want to see the position of the barges after the collision?

Q. Yes, and the position of the "Elder" also, assuming this is the Oregon shore.

Mr. WOOD.—If you are not going to show distance, you are taking a great deal of unnecessary paper.

Q. Assuming what I have marked is the Oregon shore, No. 2. I will offer this drawing as a separate exhibit.

(Testimony of Michael Moran.)

(Second drawing marked "Libelant's Exhibit 7.")

Q. Now, do you understand what I want, Captain? I want you to take the models of the barges and the "Kern" and place them in the position that they were after the "Elder" struck the "Kern," so as to show us how, if at all, the "Elder" affected their relative position as they were before the collision.

A. Well, here we go. Just swung right around like that as near as I remember; probably they were more upstream, we will say. We will move them up that way. That is when I last saw them; that is the way they were. [85]

Q. How soon was that after the collision?

A. That was immediately. I walked aft before the "Elder" backed out from where she went into the cut.

Q. What do you mean when you say before she went into the cut?

A. Before she got out of the cut.

Q. Before she was stuck in there?

A. Before she was stuck in the "Kern"—while she was stuck in there, I meant to say, I walked aft; saw the "Elder" here and looked to see if anybody on the "Elder's" bow. I went over and saw the barges then; at that time they went alongside.

Q. Whereabouts did you stand, Captain, at the time you walked aft to see the "Elder"?

A. Well, I climbed over this railing here, this iron railing.

Q. What railing is that?

(Testimony of Michael Moran.)

A. An iron railing that goes around the upper deck of the "Kern."

Q. Which side the deck?

A. Aft the starboard side and I got aft—couldn't get further aft than here.

Q. Just mark with a cross on the after deck where you walked. A. Well, walked here.

Q. How about the cabin—did you walk outside the cabin or not?

A. No, about over there. I can put it above here.

Q. At the position to be marked "X"?

A. Yes, right over that "X."

Q. Now, where did you stand with respect to the cut in the side of the "Kern," forward or aft?

A. Forward of it at that time. You mean when I went around?

Q. No, when you went back.

A. I stood on the port side, on the port side of it and abaft the "Elder's" stem. [86]

Q. On the port side and abaft the "Elder's" stern?

A. Yes, that would indicate in here according to this diagram.

MR. FULTON.—According to the model?

A. According to the model.

Q. Which side did you walk down?

A. Down the starboard side; from forward aft along the starboard side until I come abreast that cross—have put that cross. I found the iron railing bent in across and I turned around and walked around this same house and aft again on the port side of the "Kern," and the "Elder's" stem was

(Testimony of Michael Moran.)

still in her. I put my hand on the "Elder's" stem and looked up to see if anybody up there and I didn't see; and I went forward after that and saw the barges then beginning to go around from the "Kern."

Q. Now, you went forward which way?

A. Port side.

Q. When, if at all, did you see the barges?

A. Saw them just at that time when going forward on the port side, and they were getting away from the "Kern" a little ways.

Q. How were they located with respect to the "Kern"?

A. They were right alongside there and some of the men—the crew, was going over on the barges. At the time I went forward I saw them.

Q. As you recall, have you placed them as they were at that time?

A. As I remember that is about the way they were as the "Elder" struck us. That is upstream, isn't it?

Q. This is upstream. A. Hold on, now.

Mr DENMAN.—Hold on, you testified they were in that position.

Mr. CAMPBELL.—Go on.

Mr. DENMAN.—I want them as they were in the first instance.

Q. I want your fair, honest, judgment. There is no catch about [87] this. I want your honest judgment as to the location of the barges.

A. Now, the "Kern" was still in here. Is that

(Testimony of Michael Moran.)

in order for me to go on and explain?

Q. Yes, you mean the "Elder."

A. The "Elder" was still stuck, I mean the star-board quarter. Well, we swung around; as soon as the barges got away she swung around. As I walked forward along the port side the barges were getting away. I walked up along here about along this side here. The barges were then getting away. They were in this position. They got away and no more of the men—only myself and the mate and the chief engineer and the cook left, and one oiler on the boat. The rest were on the barges. The other men couldn't get over there.

Q. I want you to place, Captain, the position of the barges and the tug at the time that you saw them when you walked forward from aft on the port side after going to the bow of the "Elder."

A. Well, they was here. The barges were heading—that is upstream. The barges were heading up here; they are now probably a little more this way.

Q. You place the models. That is what they are here for.

A. That is as near as I can. They were probably in that shape, as near as I remember.

Q. That is your best judgment, your best recollection?

A. Yes.

Mr. DENMAN.—Before the model is drawn, you mean that this is the way or the way you first had it, straight?

A. At the time that I was going forward she had been that way, right alongside.

(Testimony of Michael Moran.)

Mr. CAMPBELL.—I object to cross-examination while I am [88] making my examination. You will have all the opportunity you want to tie this man up on cross-examination.

A. Now, the “Kern,” you know, she was headed toward the Washington shore; after the barges got away from here the “Elder” still stood and worked astern so she headed in to the Washington shore.

COURT.—That is the position, now, while you were walking down the port side?

A. Yes, your Honor.

Mr. WOOD.—Immediately after the collision?

A. Immediately after the collision, or at the time of the collision, rather. The “Elder” was still stuck in the side of the “Kern.”

Q. Now, indicate the starboard barge and the port barge.

A. This is the starboard barge, this is the head barge.

Q. We will call it the center barge.

A. All right—the port barge (indicating).

Q. Now, can you show me also upon this drawing by means of the model of the “Elder,” the position that the “Elder” occupied with respect to the “Kern”? A. At that time?

Q. At the time that you walked from the aft end of the vessel to the forward part on the port side?

A. Yes, sir; right there.

Q. Is that, in your judgment, the way they were?

A. As near as I—to the best of my judgment that

(Testimony of Michael Moran.)

is the way each stood—that is the position. (Mr. Campbell draws them in.)

Q. Now, Captain, how long did the “Elder” remain in the hole that she had cut into the “Kern”?

A. Well, as near as I remember, she remained there probably three or four minutes—four or five minutes.

Q. And what effect did it have upon the “Kern”?
[89]

A. Well, it had the effect of these barges—got these barges drove away from us and had the effect to turn the “Kern” around and head him toward the Washington shore at right angles.

Q. Now, take the two models—take the model of the “Kern” and show where it was.

A. (Taking models.) Is that what you mean? Just had that effect, to turn her around like that, head her in that way toward the shore.

Q. Place the “Kern” in the position you think she was.

A. Well, there; kept on turning here.

Q. Have you got it in the position that you think it was? A. Yes, sir; as near as I remember.

Q. What did the “Elder” do after she swung you around to the position that you last marked?

A. She backed out; she backed astern. She went astern and lay out here in this direction, as near as I remember.

Q. What do you mean by “this direction”?

A. Well, he backed out from the “Kern”; backed upstream and over in here.

(Testimony of Michael Moran.)

Q. Which direction was that?

A. Between the "Kern" and the Washington shore.

Q. Between the "Kern" and the Washington shore. And what did the "Elder" do after that?

A. She lay there for a considerable time and someone asked me if they could give me any assistance, and I said they could give me a line to tow to shallow water so she wouldn't sink there; didn't get any reply and didn't hear any further about it. And after a while one of the officers of the "Elder" came over and I was on the "Hercules"—after I got off the "Kern." Came over and asked me some questions concerning if anybody was drowned or hurt or anything. I told him I didn't think so; by going over to look at the barge he would find out. They were all over there. [90]

Q. Now, how near to where the "Kern" sank did the "Elder" remain after the collision?

A. Well, just a short distance off.

Q. Upstream or downstream or where?

A. In between me and the Washington shore on the upstream side of her.

Q. What did you do after the "Kern" got into the last position which you have shown with her head toward the Washington shore?

A. What did I do myself?

Q. Yes.

A. I just stayed around there; I couldn't do anything.

(Testimony of Michael Moran.)

Q. What did you do—you must have done something.

A. Yes, I kept on blowing the whistles for the “Hercules” to come.

Q. What kind of whistles?

A. Distress whistles.

Q. What were they?

A. Several short whistles. Continuous blowing of whistles—continuously blowing them every once in a while until I got some other boats to come and tow that boat into shallow water.

Q. Go ahead now and tell us the rest of the story, just what happened after that.

A. Well, the “Weown,” she didn’t come for quite a while. The “Hercules” heard my whistles and let go the light barges and come down; anchored the light barges up above and just as he got there the “Kern” commenced to sink, the after part of it, and going downstream. Just as he got there I had to jump. The mate he missed; he jumped overboard and we helped him aboard out of the water—Mr. Anderson.

Q. What became of the crew?

A. The “Kern’s” crew? They were on the rock barge. The chief [91] engineer got into the barge; we lowered him down a little while before she sunk; lowered him with the cook and the oiler.

Q. How far off the Washington shore, Captain, do you think the “Kern” sank?

A. About a thousand feet; anyway from a thousand to 1,200 feet, I don’t exactly know.

(Testimony of Michael Moran.)

Q. When did you put your helm to port before you rang your full speed ahead signal?

A. I had that apart the very minute I got down to the barges, after I got the ship stopped at the barges. The tug stopped at the barges; I put my helm port to port with the intention of backing her, and on account of having left-hand propeller would help that way; that was my object in doing that at that time.

Q. What reason did you have for making fast to the barges in the position as shown by Exhibit 7?

A. Well, I put that head-line there with the object in view of backing up the "Kern" to swing the barges head downstream to get in between them.

Q. In what position would you have them to push them downstream?

A. What position would I have them?

Q. Yes, with respect to your boat.

A. I would have them right ahead of me then.

Q. Where would the port and starboard barge be?

A. Would be on the starboard bow after I swung downstream.

Q. Where would the port barge be?

A. Port bow.

Q. The center barge? A. Right ahead.

Q. Now, Captain, if when you went ahead on your engine full speed you had shifted your helm to starboard instead of to port, what effect would that have had upon the course of your steamer?

A. It would have thrown her—it would have—the starboard helm [92] would have thrown her head

(Testimony of Michael Moran.)

toward the Oregon shore and the stern toward the Washington shore.

Q. Where would it have thrown her head with respect to the rock barges?

A. Would have thrown them right into her—right up against them.

Q. And where would it have thrown the stern of the “Kern” with respect to the “Elder”?

A. It would have thrown the “Elder” probably on our port quarter.

Q. On what port quarter?

A. On the port quarter of the “Kern.”

Q. On the port quarter of the “Kern.” Now, then, Captain, if you had not gone ahead with your engine as you did and had remained in the position that you were when you first received the “Elder’s” whistle, what, in your judgment, would have happened?

A. Well, I believe he would have struck me a little aft.

Q. What makes you think that?

A. Well, judging from the way he was heading unless he had changed his course.

Q. Tell us about it.

A. Well, I had to look right aft from the “Kern’s” bridge and the “Elder” was coming right directly astern of me, a little the starboard quarter as near as I knew, but as near as I could judge pretty well astern and headed right for me.

Q. Will you state whether or not there was any change in the position of the “Elder” between the

(Testimony of Michael Moran.)

time that you gave your last four blast signal and the time that you rang full speed ahead?

A. Yes, she was then backing. The "Elder's" bow was swinging to port.

Q. When you say she was swinging to port, which way was the "Elder's" bow swinging with respect to the Oregon or Washington shore? [93]

A. She was swinging towards the Oregon shore.

Q. Captain, what lights, if any, did you have on your vessel?

A. We had two masthead lights, starboard green light and port red light, and a stern light up.

Q. Do you know whether or not they were burning prior to and up to the time of the collision?

A. Yes, sir, I am sure they were burning. Now, at the time of the collision I had a searchlight burning.

Q. What were you doing with it?

A. That was down on the barges. Pointed the light forward showing the men on the rock barges—light to get around—where to get their lines out.

Q. Which rock barge was it thrown on?

A. On the port rock barge. The port bow of the "Kern" was right ahead. That would be on the port barge, of course.

Q. Will you state whether or not at any time you threw it upstream of you on the "Elder"?

A. No, sir, at no time.

Q. Did you ever try the light to see whether it could be thrown astern or not? A. I never did.

Q. What reason, if any, Captain, did you have for

(Testimony of Michael Moran.)

responding to the one blast signal of the "Elder" with four short blasts?

A. Well, my reason was that I concluded there was nothing going to happen but a collision; that he was going to run right into me and I thought I would warn him of the danger he was approaching.

Q. Why did you think there was going to be a collision?

A. Well, I could see by his lights—judging the way he was heading by his signal lights—he was heading right for me all the time. Not making any attempt to alter his course that I could notice. [94]

Q. How soon did you see him after he blew his one whistle?

A. I saw him right away after I went outside—while I jumped out of the pilot-house and looked astern.

Q. At that time will you state whether or not he was swinging or whether or not his lights were stationary or how they were.

A. They seemed to me to be about steady. He seemed to be coming right head-on to me steady. I couldn't notice any change of his signal lights. If he was swinging I couldn't notice it.

Q. How was the room between you and the Washington shore?

A. There was considerable room there, anyway from twelve to thirteen hundred feet of room, as near as I could judge.

Q. In your judgment there was room sufficient for the "Elder" to pass down between you and the

(Testimony of Michael Moran.)

Washington shore? A. Yes, sir.

Q. How was the water?

A. Considerable good water up to within pretty close to the Washington shore.

Q. In view of these facts, why didn't you give him—respond with a one-whistle signal?

A. Well, I would have if he had shut out his green light. I would have given him the regular passing whistle, but he didn't make the attempt to do it, and I thought it was my place to give him the danger whistle; on account of laying still and the rock barges on my port bow, I couldn't comply with his whistle to go ahead on the starboard helm, was my reason for doing it.

Q. Will you state whether or not you had any control of your barges at that time?

A. I had no control whatever.

Mr. DENMAN.—Your Honor, these maneuvers took place, under our opponent's theory, under certain rules, and I think it might [95] be well for you to have a copy of that rule before you as the testimony is given, because the witness is testifying with reference to that rule.

COURT.—What is that rule?

Mr. DENMAN.—I mean to say unless one knows the rule, this would be unintelligible.

Mr. WOOD.—It is No. 8, you mean?

A. No. 2.

COURT.—Just read the rule.

Mr. FULTON.—He is required, if he wants to go to the right, to give one whistle. If the vessel to

(Testimony of Michael Moran.)

whom he signals is willing he should pass to the right, it responds with one whistle. If he wants to go to the left he gives two whistles, and if the other vessel is willing he should pass to the left, it gives two whistles, but if it gives what he calls the danger whistle, it means he must not pass; that there is danger.

Q. How did the width of the channel at this point compare with the average width of the channel for a distance of five miles up and down each side of it?

A. Oh, it was exceedingly wide there in that particular place, very wide.

Q. Will you state whether or not in your judgment there was room for the "Elder" to have passed between you and the Oregon shore?

A. Yes, sir, lots of room. There were several ships had passed.

Q. How was the water for the "Elder"?

A. Plenty of water.

Q. At the time that you heard the first whistle blown did you know what vessel it was?

A. I did not, sir.

Q. Did you know what was the customary danger signal used by vessels navigating the Columbia River? [96] A. Yes, sir.

Q. What is it?

A. Four short and rapid blasts of the whistle.

Q. Was there any time from the time that you first saw the "Elder" until after the collision that the lights of the "Elder" were shut out from you?

A. No, sir; no time.

Q. Did I ask you what in your judgment would

(Testimony of Michael Moran.)

have occurred, if anything, if you had not gone ahead on your engine at the time you did?

A. Well, to the best of my judgment I would either have run up into the stern of the "Elder," right clean through her.

Q. Of the "Elder?"

Mr. DENMAN.—Of the "Elder" or the "Kern"?

A. Of the "Kern" I should say—the "Elder" would have.

Q. Why did you go ahead?

A. I went ahead to avoid the collision, if I could possibly do it—to get from under his bows.

Cross-examination by Mr. DENMAN.

Q. Captain Moran, when did you first see these models?

A. The first time I saw them was to-day.

Q. When did you first talk this case over with Mr. Campbell? How long ago was it?

Mr. CAMPBELL.—I will admit he talked it over with me this morning when he left the courtroom.

Mr. DENMAN.—Now, that is just the admission I don't want.

Mr. FULTON.—It is that admission that means a suggestion.

Q. When did you first talk this case over with Mr. Campbell?

A. Well, I first talked the case over with Mr. Campbell I think [97] this morning or once before—once before, I guess.

Q. Once before; when was the once before?

(Testimony of Michael Moran.)

A. Well, I could not hardly say, but it was a couple of weeks ago.

Q. There was nothing wrong in that. That is entirely proper.

A. No. I will try to tell the truth about it, your Honor.

Q. You then went over all the details of this matter with him and explained the case?

A. We went down to the place where the accident occurred.

Q. Oh, I see; and you pointed out to Mr. Campbell just how these boats lay there in the place itself?

A. Yes, sir, as near as I could to him.

Q. As near as you could; and then after you explained that to Mr. Campbell he came back and had these models made; is that it?

A. I don't know when the models were made.

Q. I see; but the next time you met him you had the models and you sat down and went through these diagrams just as they have been drawn here, did you?

A. No, sir. I never saw the models until I saw them here to-day with Captain Crowe.

Q. Well, did you show the Captain how they lay with reference to the shore? A. No, sir.

Q. So, then, Mr. Campbell as he lay these out must have gotten any suggestions he got as to the positions from your trip with him down the river?

A. Yes, sir.

Q. And you described to him the vessels in these various positions here at that time?

The COURT.—You will have to speak out so the

(Testimony of Michael Moran.)

reporter [98] can hear you.

WITNESS.—All right, your Honor.

The COURT.—Nodding your head and shaking your head doesn't get into the record.

Q. And these exhibits 6 and 7 are, on your oath, a true description of the angle that these vessels lay in with reference to the Oregon and Washington shores at the times you have described?

A. Yes, as near as I can tell.

Q. Well, your recollection is very clear on it, isn't it?

A. Yes, it is pretty clear. I could not be expected to remember for three years.

Q. Now, when you first came and affixed this line to the three barges the "Daniel Kern" was pointing towards the Oregon and away from the Washington shore?

A. Heading downstream. You mean the first time?

Q. Yes. Come right here and we will look at this (referring to plat).

A. I want to see which of these exhibits it is. I don't know where they are on there (indicating).

Q. I think your exhibit is right. There is no question about that. I want to make certain of that.

A. That was the position when I first got the "Elder's" signal (referring to exhibit).

Q. There you are pointing to what, the "Daniel Kern"? A. Yes, sir.

Q. On the exhibit 6, and with a line attached to the port barge of the three barges; that is correct, isn't

(Testimony of Michael Moran.)

it? A. That is correct.

Q. At that time you were headed away from the Washington shore and towards the Oregon shore?

[99] A. Well, headed downstream.

Q. Well, towards the Oregon shore?

A. Well, the Oregon shore comes down (indicating). Yes, I would be heading down; I would not be heading towards the Oregon shore.

Q. Well, you drew it that way?

A. Well, we would not necessarily go down that way (indicating).

Mr. CAMPBELL.—If the Court please, you understand when I drew these lines of the Oregon and Washington shores I didn't attempt to outline the shore, but it was simply to show each side of the river.

The COURT.—I think I understand the conditions very well.

WITNESS.—I meant to say the "Kern" was heading downstream in the middle of the river, this side of the line of the Washington shore, right off Puget Island.

Q. Your position is now she was running right downstream?

A. Yes, sir; laying south of the barges, laying across the stream, as near as I could tell.

Q. As I understand, the line which fastened the "Daniel Kern" to the port barge was broken at the time of the collision?

A. Well, it was let go and broke partly at the same time, as near as I could tell,—as near as I remember.

(Testimony of Michael Moran.)

Q. At the time of the collision?

A. After the collision, after he struck us.

Q. After he struck you? A. Yes, sir.

Q. So it was fastened there at the time he struck you? A. Yes, sir.

Q. And as I understand it, you started your engines when the "Elder" was about twenty feet from you, twenty or twenty-five feet? [100]

A. Yes, sir.

Q. You are quite sure as to that?

A. Yes, quite sure.

Q. Then you were dead in the water at that time, weren't you? That is correct? A. Yes, sir.

Q. You were dead in the water at that time?

A. Yes, sir; up to the time I started the engine.

Q. Yes, and you were fastened to these barges?

A. Just had the line out.

Q. Had a line there, and your port side was against the after starboard corner of the barge; that is correct, isn't it?

A. Well, I might not have been against it exactly.

Q. You remember testifying you were against it, don't you? A. Not exactly against that.

Q. Now where were you?

A. If there was any at all there would not have been much distance, not a great deal of distance, a couple of feet probably if anything between them.

Q. All right; a couple of feet?

A. I don't know, because I could not see down there, you know, from where I was.

Q. All right. Now how far do you suppose you

(Testimony of Michael Moran.)

moved the "Daniel Kern" starting from dead in the water and tied to the port barge, between the time that you saw the "Elder" twenty-five feet off and the time she struck?

A. Oh, she probably moved twenty-five or thirty feet; I don't know for sure but judge she might move thirty or forty feet. She moved until that line came tight and that line held her there until the "Elder" struck her; then they parted and I sung [101] out to the mate to let her go and he did so; or, at least, he let her go without me signing out, in fact.

Q. So that the position of the "Daniel Kern" had altered very little then between the twenty-five feet that you saw the "Elder" off and the time she struck; there really was very little change in your position?

A. Very little, unless she swung around a little on account of the helm aport.

Q. A degree or a point?

A. Oh, I have no idea how much, but she swung some on account of the helm being aport and the engines dead ahead.

Q. She was dead in the water?

A. That would make a steam vessel move all the quicker astern.

Q. With the line holding her head to starboard?

A. Well, before that line came tight; I am telling you now that line was slack, you know.

Q. Your testimony was she had her line fast?

A. I had her line out. I said, and made fast.

(Testimony of Michael Moran.)

There was probably some slack in that line.

Q. How much slack was in it?

A. Oh, I suppose a small bit, probably a few feet.

Mr. FULTON.—How many?

A. Probably a few feet.

Q. Ten feet?

A. Maybe. Perhaps none at all, for all I know.

Q. About ten feet?

A. I know very well just getting the line out and taking a slight turn around the bitts there would not be any strain on them.

Q. You could not have gotten more than ten feet slack on the line, could you? [102]

A. Well, I have got no idea how many feet to the foot one way or the other, only I know very well the strain came on that with a jerk at the time I went ahead and held the ship right there to the barges and the barges swung this way (indicating) and went that way (indicating); and then when the "Elder" struck her of course she slued her stern down and it parted this line and the mate let her go at the same time he told me.

Q. As I understand it, when the collision occurred the barges were pointing about square upstream, according to that Exhibit No. 7; that is correct, isn't it?

A. Not at the time of the collision, you know.

Q. Not at the time of the collision?

A. Here is the way they were (indicating), right as this exhibit here shows.

Mr. CAMPBELL.—Referring to Exhibit 6.

(Testimony of Michael Moran.)

A. (Continuing.) This is the position right at the time the collision occurred.

Q. I see; Exhibit 6 shows the two at the time the collision occurred?

A. The barges heading for the Oregon shore.

Q. And you were pointing straight downstream?

A. Downstream as near as I could judge at the time.

Q. Now the exhibit you referred to was Exhibit No. 6 just now? A. This one (indicating).

Q. Yes. A. All right.

Q. Now, at the time you first saw the "Elder" coming down—by the way, who did you have on decks at that time? A. Had all hands on decks.

Q. Whereabouts? [103]

A. Only the chief engineer, on the poop, and the captain.

Q. Whereabouts?

A. All down forward on the deck; all down forward here working.

Q. All the seamen and everybody were down forward? A. Yes, mostly.

Q. Didn't have any lookout aft? A. No, sir.

Q. Sure of that? A. Sure.

Q. You had just taken hold of this line to back upstream, hadn't you?

A. Yes, sir, to pull the barges up that way to go in between.

Q. Why didn't you have a lookout aft if you were going to back upstream?

A. It is not customary to keep a lookout aft.

(Testimony of Michael Moran.)

That is the reason. We wasn't going to back any distance, only just going to give her a little kick back and swing the barges. Never keep any lookout aft on a ship that I know of.

Q. The reason, now, you didn't do more to help the "Elder" in this situation is because you were laying helpless to that barge, to those three barges, making up your tow; that is the reason, isn't it?

A. Yes, sir. But I didn't really think the "Elder" would come head-on to me until he hit me; because I know that there was room enough on each side for him to go if he wanted to after giving the danger signal, but he never changed his course one degree.

Q. I see; he never changed his course one degree?

A. Not as I could see; not by his signal lights, his lights blazing right at me there straight on.

Q. You were heading downstream you say when you first saw the "Elder"? [104]

A. She might have been a little towards the Washington shore, probably a little. I couldn't exactly see in the night there. I was interested in my work getting these barges lined up, and when the "Elder" came along I was interested in her actions. I had left the barges all to the crew.

Q. What is the value of all these drawings here if you don't recollect with reference to them?

A. I do recollect every one of them drawings.

Q. Well, what is your recollection now as to which way your vessel was pointing at the time?

A. I was heading downstream outside of the Washington shore, right straight downstream as

(Testimony of Michael Moran.)

near as I possibly know.

Q. All right. Then you saw the "Elder" coming downstream. Where was she when you first saw her?

A. When I first saw the "Elder" she was right astern.

Q. Right straight astern? A. Yes, sir.

Q. Was that the usual course for her to take?

A. Yes, sir; that was the usual course for her to go down that way.

Q. She was in the fairway then, was she?

A. Yes, she was in the fairway.

Q. By the way, you say that you had left the light barges well over on the Oregon shore; do you recollect that? A. Yes, sir.

Q. That wasn't a slip; that was a fact, was it?

A. That is the fact.

Q. What did you do that for?

A. Left them over there out of the way of vessels coming downstream in case there should be any.

Q. You think that is the proper way to do, do you?
[105]

A. I do that to help a man coming downstream more so than it is to help myself. It leaves them just safe.

Q. How does it help the man coming downstream, to have them out of his way?

A. They are not in his road in any way, shape or form; they are away out of his way and he don't have to bother about them. And they are safe to keep them from running down on them, if people

(Testimony of Michael Moran.)

should come down and make a practice of that.

Q. You think the proper way of handling these barges is to put them over out of the fairway so there would be no danger; that is correct, is it?

A. Yes, sir; that is my idea of doing it.

Q. By the way, who owns the "Hercules"?

A. The Columbia Contract Company, I guess.

Q. They were operating her?

A. Yes, sir; they were operating them.

Q. And the "Hercules" had left these three barges where they were found, had she not?

A. Yes, sir.

Q. That is, right in the middle of the fairway?

A. Well, right in the middle of the fairway. There was lots of room inside of her.

Q. Lots of room between her and the shore?

A. Lots of room on either side.

Q. As a matter of fact, that is the fairway close to that shore in running from this—let's go over to the chart here. The regular route of vessels up and down the Columbia River carries them over on this Washington shore, does it not?

A. Yes, sir; right down on the Washington shore. Right there where that collision occurred was about the fairway.

Q. The reason for that is because it is the shortest course, isn't it, coming around? [106]

A. This is Puget Island (indicating on chart).

Q. Coming from Puget Island?

A. Well, here is where we were.

Q. Well, just one moment. I will try to frame my

(Testimony of Michael Moran.)

question. From Puget Island around to Eagle Cliff the natural course is nearer in on that side, the fair-way, is it not, on the Washington side?

A. We cross over about here; Westport Slough here and Westport Light would be up here somewhere (indicating).

Q. I am not asking your course; I am asking the regular course.

A. That is the regular course.

Q. You say it is on the Washington side all the time?

A. Up here, yes, sir; where the accident happened.

Q. Where the accident happened?

A. Where the collision happened, yes, sir.

Q. Now how much water is there between the place where the collision happened and the Oregon shore?

A. Anywhere from sixty feet to three or four fathoms.

Q. And how much is the distance?

A. Well, I should judge it is a mile across there from one shore to the other.

Q. What is the distance, did you say, between the place of the collision and the Oregon or southern shore?

A. Well, I could not tell you exactly, but I guess it is a mile across there from shore to shore.

Q. A mile across there?

A. Approximately; it is a mile maybe.

Q. Where does the water begin to shoal off towards the Oregon shore?

(Testimony of Michael Moran.)

A. Well, you have got to go within a few hundred feet of the island before it gets shoal. [107]

Q. In other words, you had about a mile of clear water over there before it would shoal?

A. When I say a mile I mean from shore to shore.

Q. Now from the point where the collision occurred how far was it over there?

A. Well, you could go over there within four or five hundred feet of the Oregon shore and get thirty feet of water. At least, that is what I had some time previous to that, but I don't know the stage of the tide, whether the gauge was right, or whether high water or anything else, at that time.

Q. How much water does your boat, the "Kern," draw? A. Eleven or twelve feet.

Q. How much do the barges draw?

A. About ten loaded.

Q. About ten feet. So you had at least a half mile of water out of the fairway over on the Oregon side of sufficient draft for your vessels?

A. Yes, I think so.

Q. And in bringing down your light barges you had been careful to put your light barges out of the fairway so that they would not be in danger?

A. In bringing them up, you mean?

Q. In bringing them up; that is correct?

A. Yes.

Q. Now when you first saw the "Elder" how far did you say she was from you?

A. Well, I could not exactly say, but I should judge probably eight hundred or a thousand feet.

(Testimony of Michael Moran.)

Q. It was in the dark, wasn't it?

A. It was a dark night. It is all approximate.

Q. Might have been a couple of thousand feet, mightn't it? [108]

A. No, I don't think it was that far, judging from the way I had to go by, the masthead light. That is what I had to go by more than anything else; but still I could not say.

Q. How far was her masthead light above the water?

A. I don't know exactly. It is up on the masthead. It depends on the height of the "Elder's" hull and her mast.

Q. You don't know how high it is above the water?

A. No, sir.

Q. Then you were judging that distance—

A. (Interrupting.) By the masthead light. It looked to be pretty close to me, on account of appearing pretty high.

Q. It might have been a thousand or it might have been two thousand feet?

A. I was judging a thousand feet to be the farthest.

Q. Now at that time you say she was right behind you?

A. When I first saw her, yes, I had to look right aft.

Q. Now what did you do then?

A. What did the "Elder" do?

Q. What did you do when you first saw her?

A. Well, the first time I saw her I waited until I

(Testimony of Michael Moran.)

see whether he was altering his course or not, and he didn't appear to alter his course one particle by his signal lights, and I jumped in the pilot-house and give him four short blasts of the whistle in answer to his one whistle.

Q. Did he have to alter his course before you had given him your answering whistle?

A. Well, not necessarily.

Q. Now, as a matter of fact, the rule requires that you shall give him an answering whistle before he alters the course, doesn't it?

A. That is up to me, whether I think I am in danger of being [109] run down. It is up to me to sound the danger signal or up to me to judge whether there is any danger.

Q. Was there any danger between you and the Washington shore at this time?

A. And the Washington shore?

Q. Yes.

A. There was danger if I should comply with his whistle by going ahead, or anything. There was no danger whatever that I knew of.

Q. Is there anything in the rule which requires you to go ahead when he asks permission to pass to your starboard? A. No.

Q. There is nothing in the rule?

A. Not that I know of.

Q. So you would have complied with the rule by simply blowing one whistle and letting him go between you and the Washington shore?

A. Well, I guess their rules would not have—I

(Testimony of Michael Moran.)

don't believe I would have been doing anything wrong by doing it, either.

Q. Now, at the time you blew the four whistles indicating danger there was no danger between you and the Washington shore; that is, no sunken hulk, nothing of that kind there; the water was perfectly clear, a thousand feet of water between you and the Washington shore? A. Yes.

Q. That is correct, is it? A. Yes, sir.

Q. Now, you say a thousand feet, and he was directly behind you coming down about the center line of your ship?

A. Well, that is what it seemed to be, yes.

Q. And what is the beam of your vessel? [110]

A. I don't know exactly. What is the beam? Do you know the beam of the "Kern," Mr. Kern? May I ask that question?

Mr. KERN.—About twenty-six feet.

Q. About twenty-six feet, and half of that is thirteen feet, isn't it? A. Yes, sir.

Q. And he was coming right down, as near as you could see, about the center line of the vessel?

A. Yes, sir, I could not say exactly.

Q. So in a thousand feet, if he cleared thirteen feet towards the Washington shore—I am speaking now of the "Elder"—he would have cleared your vessel; that is correct, isn't it?

A. If he got thirteen feet to the Washington—well, he wouldn't have went clear of me because I had to go more than thirteen feet to come right alongside of him.

(Testimony of Michael Moran.)

Q. I mean to say if he had come thirteen feet in the thousand feet towards the Washington shore he would have cleared you; that is correct, isn't it?

A. If I understand you right, you mean one-half the width of the "Kern," thirteen feet?

Q. You say as near as you could say she was coming right down behind the line of the "Kern" and straight forward, as near as you could see, as far as the eye could judge? A. Yes.

Q. Of course, it is indefinite? A. Yes.

Q. She would have split her right even, if she had come on?

A. Pretty near it, yes, sir, as near as I could judge.

Q. And she was a thousand feet distance from you?

A. I don't know. I should judge she was pretty close, anyway.

Q. You say it might be a thousand feet or two thousand? [111]

A. Yes; at the speed the "Elder" was coming I consider that pretty close.

Q. Now, if the "Elder" had swung forty feet in that thousand she would have cleared you for certain, beyond any question?

A. Yes, sir; I think so.

Q. And yet you could, in two seconds, tell that he wasn't going to put his helm over and clear those forty feet; is that correct?

A. No, I could not tell what he was going to do; not that he hadn't lots of time to do lots of things there if he had done it, but he didn't indicate he was

(Testimony of Michael Moran.)

doing anything but what I saw. When he was heading right for me I thought it was well to indicate the danger he was approaching. That is what made me give the danger signals.

Q. He could see where you were, couldn't he?

A. He could see my light.

Q. He could see you that thousand feet away, couldn't he? A. Well, I don't know.

Q. Well, whatever the distance was?

A. I don't know.

Q. You admit that the one-whistle signal from the "Elder" was asking whether he could pass to your starboard or right; that is correct, isn't it?

A. Well, I suppose it was; yes.

Mr. CAMPBELL.—I submit, if the Court please, the rule provides what the one-whistle signal is for.

Mr. DENMAN.—You have asked his motives, and I want to follow them up. I want to show this man either didn't know the rules or violated them willingly.

Mr. FULTON.—He knew when a man gave one signal he wanted to pass to the right. [112]

The COURT.—One whistle was an indication that the vessel wanted to go to the right.

Mr. DENMAN.—Yes.

The COURT.—That is not controverted, is it?

Q. How long did you say you stood there before you made up your mind that the "Elder" was not going to swing over that twenty-five or thirty feet in the thousand?

A. Well, I should judge when I saw his lights I

(Testimony of Michael Moran.)

went in right away as quick as I could. I waited long enough while I was walking across the deck and I didn't see any change in his signal lights and he appeared to be getting pretty close to me and I jumped in the pilot-house and gave him the danger signals, as the rule says.

Q. You saw he was pretty close; what did you do then? When you jumped in the pilot-house and gave him the danger signal, then what did you do?

A. Then I came out again and watched him.

Q. Then you came out again and watched him?

A. Yes, sir.

Q. When you came out again where was he?

A. He was still heading in the same position, heading right for me.

Q. I thought you said he was on your starboard then? A. No, he wasn't.

Q. Still heading right for your stern?

A. Yes, sir.

Q. Is that it? A. Yes, sir.

Q. Would have still split you right in half, coming on? A. Yes.

Q. Now, that was after you had given the four whistle signal, wasn't it? [113]

A. Yes.

Q. And that four whistle signal indicated there was some danger, did it not? A. Yes, sir.

Q. And the only thing he could have done when he got the four whistle signal was to reverse his propeller, wasn't it?

A. Well, he could have went either way or backed

(Testimony of Michael Moran.)

up then. It is up to him to judge, according to my notion and according to the rules, too.

Q. You mean to say when you have blown four whistles indicating that there is danger ahead that he has got any other recourse than to stop his ship?

A. Well, the rules say he should stop and back up.

Q. All right. Then he was doing the right thing in stopping and backing up, wasn't he? Is that correct?

A. Yes, sir, I guess it is, according to the rules.

Q. All right. Now, let's get this in seconds. You heard one whistle? A. Yes.

Q. In two seconds you gave a four-whistle signal?

A. Well, near about that.

Q. Yes; and the only thing he could have done when he got that four-whistle signal was to back, under the rules?

A. Well, he could have went on either side of me if he wanted to.

Q. He could not, when you gave him the danger signal, have come on?

A. Well, the rules give him the privilege to depart from that, if he wants to.

Q. I know. As far as your four blasts would indicate they would indicate danger ahead, wouldn't they? [114]

A. Yes, sir; but the way he was coming at that time he could change his mind and go to either side of me.

Q. It would be his business, when you indicated

(Testimony of Michael Moran.)

there was danger ahead, to stop his vessel, would it not?

A. It would be his business, yes, to get his vessel under control.

Q. Now do you know whether or not she has a left-hand or right-hand propeller? A. How?

Q. Do you know whether she has a left-hand or right-hand propeller?

A. She has a left-hand propeller, the "Elder" has.

Q. What effect does that have upon her?

A. When she backs it throws her head to port and stern to starboard.

Q. That is, her head would leave the Oregon shore?

A. Yes, sir.

Q. So as she would go ahead under gradually diminishing speed it would curve from the Washington over to the Oregon shore; that is correct, is it not? A. Yes, sir, as far as I know.

Q. What is the weight of these three barges, loaded?

A. About three thousand tons, I guess; anywhere from twenty-eight hundred to three thousand tons.

Q. Twenty-eight hundred to three thousand tons—apiece? A. How?

Q. Each one?

A. No; the whole three of them.

Q. The whole three. That is a pretty clumsy contrivance to move, isn't it?

A. Yes, sir; it is not very easy to move them, not under the conditions. [115]

Q. And especially not easy to move before you get

(Testimony of Michael Moran.)

your nose into them and get them in shape?

A. You can't move them until you get in.

Q. So during all the time you are making her up she is pretty helpless? A. Yes, sir.

Q. You say it is now customary to go the whole way through with your barges; is that correct? You no longer swap in the middle of the stream?

A. Now?

Q. Yes.

A. I don't know what they do now. Not at that time it wasn't customary.

Q. Do you know what happened after that? Do you know whether they made any change in their method of handling the barges?

Mr. CAMPBELL.—If the Court please, we object to that as immaterial.

A. Just the same as the "Hercules," the "Samson" changes; it is just the same.

Q. They do now change just the same?

A. Yes, sir. But they have another boat now that tows right through.

Q. You say you haven't been with them since that time?

A. No. I don't know anything about what they do outside of changing tows.

Q. How is that?

A. They change tows just about the same as they always did.

Q. When did you leave the employ of these people?

A. Last March.

Q. They continued right on the same method after

(Testimony of Michael Moran.)

you left them? [116] A. Yes, sir.

Q. Exchanging these barges right in the fairway where the vessels are passing up and down; is that correct?

A. Yes; most of the time they do the best they can; at least we always did, to get out of the fairway.

Q. Get out of the fairway if you can?

A. Yes, sir; most of the time, wherever we can, wherever it is necessary to do it, wherever there is not plenty of room.

Q. Well, there was plenty of room clear to get out of the fairway, wasn't there?

A. Yes, sir, there was plenty of room for other vessels to get through the fairway, too. We were in such shape to that fairway as that they were safe.

Q. To make your idea clear, your idea was that it was safe for you to stay in the fairway—

A. (Interrupting.) Our idea is we had as good a right in that channel as any of them.

Q. To make up your tow? A. Yes, sir.

Q. Well, then, why did you take your barges over to this other portion?

A. We do that as a rule to help the people, keep them out of the way. We don't have to if we don't want to, as I understand the law.

Q. You think there is no rule against it?

A. There is no rule against me changing my tow on the river anywhere.

Q. You think it would be better and safer navigation to put it over?

A. Yes, sir. We do that to accommodate people

(Testimony of Michael Moran.)

that have to come in contact with those barges, as a rule. [117]

Q. When you stated then a while ago it was safer to do it over there, you didn't mean that?

A. Yes, sir; I meant it; I say we do it wherever it is practical to do so, but there is nothing compelling me to do it if I don't want to. There is no rules or laws compelling me to do that, that I know of.

Q. Now, you say that just before you started your engines when the "Elder" was about twenty feet from you, that she then had been swinging to starboard? A. To port.

Q. To port?

A. Yes; towards the Oregon shore.

Q. And after that you started your engines and went ahead?

A. After I was sure she was swinging that way I was safe then to go ahead.

Q. You didn't start your engines ahead until she was swinging? You were to be sure of that?

A. I was to be sure of that; yes, sir; that is the idea.

Q. You could see them quite a ways coming over from, away from her port; that is, swinging to her port for quite a little ways?

A. Well, about twenty-five feet, I should say, when I run the engine ahead.

Q. You saw them twenty-five feet away?

A. Yes.

Q. Prior to that time she had swung enough

(Testimony of Michael Moran.)

you could make up your mind she was swinging over towards port?

A. Yes, sir, she was swinging, swinging slowly.

Q. And that swinging over is what brought her now at this sharp angle into your vessel, is it not? That is correct, isn't it? [118] A. Yes, sir.

Q. That is why the stroke seems to be pretty near at right angles, isn't it?

A. And we were swinging at the same time, under a port helm.

Q. You could not have been swinging under a port helm if you didn't start until after that?

A. I started immediately as soon as I discovered he was swinging to port and towards the Oregon shore, I started my helm to port, which threw the "Kern's" stern around towards the Oregon shore and her bow towards the Washington shore.

Q. She was only twenty-five feet from you?

A. Well, as near as I could judge.

Q. And then you moved, to get into you at right angles, didn't you?

A. Well, I don't know as to that.

Q. Well, that angle shown there is the correct angle, isn't it (counsel referring to wooden model)?

A. Well, I guess it probably is.

Q. And you at that time were pointing her bow downstream? A. Yes, sir.

Q. I see by this Exhibit No. 7 that at the moment she struck you the three barges were pointed about up and downstream?

A. That was after she struck us.

(Testimony of Michael Moran.)

Q. That was after she struck you; how long after?

A. Oh, right away after she struck me why that forced the barges' sterns downstream.

Q. So after he struck you the barges were pointing straight upstream and you were laying parallel alongside of them and pointing downstream?

A. Well, partly, yes.

Q. Then you were pointing downstream and she continued to [119] push you around until you were at right angles across the stream?

A. Yes, sir; that is right.

Q. So that he struck you when you pointed downstream, then he pushed you around until you were across the stream at right angles? A. Yes.

Q. You pass a great many steamers going up and down that river, don't you?

A. Yes, a good many.

Q. And they are coming and going right along, aren't they? A. Yes.

Q. Did you pass another just before that?

A. Yes, sir.

Q. And there was, I suppose, just about as much business there in 1909 as there is now, wasn't there, on the river?

A. I believe there was—a little more, if anything.

Q. A little more. That is all.

Redirect Examination by Mr. CAMPBELL.

Q. Which of the two tugs let go of the barges first, Captain, the "Hercules" from the loaded barges or the "Kern" from the light barges?

A. The "Kern" from the light barges.

(Testimony of Michael Moran.)

Q. What was your custom with respect to that?

A. Well, the custom is for the "Hercules" to stay with the loaded barges until we get down there right close to the loaded barges.

Q. How far away from the loaded barges did you get when you were going down?

A. Just about a little more than—she just had backed out [120] and turned around. She was right close to the loaded barges heading upstream when we got down, just had backed out in order to let me go in there.

Questions by the COURT:

Q. These barges were not anchored in any way at all, the loaded barges? A. No, your Honor.

Q. How long had you been pursuing that custom, exchanging the barges in the middle of the stream, or in the fairway?

A. Well, I had been doing that some time. I began in April, the first of April, or the fourth of April, I believe we started to work, and we had continued that up to that time.

Q. I understand then that the one boat having the charge of the barges going down and the other boat having the charge of the barges coming up, simply unloosed from the barges and let them swing in the stream? A. Yes, sir.

Q. Let them drift in the stream?

A. It leaves them right there and exchanges tows.

Q. And if the current is running out—for instance, at the time of the accident if the current had been

(Testimony of Michael Moran.)

Q. That was after she struck you; how long after?

A. Oh, right away after she struck me why that forced the barges' sterns downstream.

Q. So after he struck you the barges were pointing straight upstream and you were laying parallel alongside of them and pointing downstream?

A. Well, partly, yes.

Q. Then you were pointing downstream and she continued to [119] push you around until you were at right angles across the stream?

A. Yes, sir; that is right.

Q. So that he struck you when you pointed downstream, then he pushed you around until you were across the stream at right angles? A. Yes.

Q. You pass a great many steamers going up and down that river, don't you?

A. Yes, a good many.

Q. And they are coming and going right along, aren't they? A. Yes.

Q. Did you pass another just before that?

A. Yes, sir.

Q. And there was, I suppose, just about as much business there in 1909 as there is now, wasn't there, on the river?

A. I believe there was—a little more, if anything.

Q. A little more. That is all.

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A. The "Kern" from the light barges.

(Testimony of Michael Moran.)

Q. What was your custom with respect to that?

A. Well, the custom is for the "Hercules" to stay with the loaded barges until we get down there right close to the loaded barges.

Q. How far away from the loaded barges did you get when you were going down?

A. Just about a little more than—she just had backed out [120] and turned around. She was right close to the loaded barges heading upstream when we got down, just had backed out in order to let me go in there.

Questions by the COURT:

Q. These barges were not anchored in any way at all, the loaded barges? A. No, your Honor.

Q. How long had you been pursuing that custom, exchanging the barges in the middle of the stream, or in the fairway?

A. Well, I had been doing that some time. I began in April, the first of April, or the fourth of April, I believe we started to work, and we had continued that up to that time.

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Q. Let them drift in the stream?

A. It leaves them right there and exchanges tows.

Q. And if the current is running out—for instance, at the time of the accident if the current had been

(Testimony of Michael Moran.)

running out it would have been carrying the barges downstream?

A. Well, the other boat generally brings them to a standstill until the boat that has the light barges gets down there, or as close as it is possible to get to them and give him room to get out from between them.

Q. How long does it take you to make fast to a barge?

A. Well, it depends on how quick the men works. If you have got men that is used to it, we have changed at times in five minutes, from five to ten minutes. [121]

Q. You do all of that in five to ten minutes?

A. What I mean now, your Honor, is we make fast; from the time we get to the barges until we are under way going downstream, under control; we have control of the tow anyway from five to ten minutes.

Q. Of course, while you are loose from the barges you have no control of the tow at all? A. No.

Q. Then you have to pick it up as quick as you can with the barges loose in the stream?

A. Yes.

Q. Do you consider that a safe practice, to leave those barges in the fairway?

A. Well, they are pretty well lighted up, you know. Men has got lights on them. There is a man on each barge with three lights,—on the stern and a light on each outside barge forward.

Q. Well, I am asking you for your opinion; do you

(Testimony of Michael Moran.)

consider that a safe proposition?

A. Yes, sir; I can't consider anything wrong about it. I had been doing it for years before that.

Q. When I ask you about a safe proposition, I have reference—

A. (Interrupting.) To my own opinion.

Q. (Continued.) —to yourself as well as passing boats? A. Yes, sir.

Q. Was it safe for passing boats?

A. Yes, sir, I considered it perfectly safe, as long as the men could see the lights on them. [122]

Recross-examination by Mr. DENMAN.

Q. Mr. Moran, what was the condition of the tide at that time? A. How?

Q. What was the condition of the tide at that time? Was there any current?

A. It was about low water, slack; probably the first of the flood.

The COURT.—He answered that before.

Q. Don't you recollect testifying before the Inspectors that the water was dead?

A. Well, slack water, yes; low water, slack; that is what I mean; it would be dead water.

Q. And that the water was practically immovable at that time?

A. Practically still; might have been on the turn coming up, if anything.

Q. Might have been on the turn coming up?

A. Yes, sir.

Q. So there is no reason why you could not have

(Testimony of Michael Moran.)

put these a half mile over to the Oregon shore at that time?

A. It was never necessary; never was practical to do it before.

Q. Why, it is perfectly easy to go over there, isn't it? A. How?

Q. It is perfectly easy to go over there, isn't it, to steam over there?

A. Yes, you can do it if you want to.

Q. And you did put the light barges out of the fairway?

A. That is the custom. Coming up the light barges always passed to the starboard side and the ones coming down to the starboard side going down there, on that side of the channel.

Q. In other words, you want to get them out of the way for the passage of your own vessels? [123]

A. Yes, sir.

Q. But as far as other vessels are concerned you think you had a right to be right in the fairway; that is correct?

A. No; we had a perfect right to be there either for our own vessels or other vessels, so far as the rules and laws that I know of. We have the same right in the fairway as anybody else.

Q. You say they have been doing that for some years. You mean by that the Columbia Contract Company have been doing it?

A. Yes, sir; the same people, and other people as well as them make up tows and log rafts in the channel and lots of things.

(Testimony of Michael Moran.)

Q. Make up log rafts in the channel?

A. Yes, sir; if it is necessary.

Q. Is it ever necessary to make up a log raft in the channel? A. Sometimes they break adrift.

Q. I am talking about making up in the channel?

A. Oh, no.

Q. So the only people who use the channel for making up tows and contrivances of this kind are your Company; that is correct, isn't it?

A. Well, that is all I know of. I guess other companies could do the same, if it is necessary; but I don't know of any that does do it.

(Witness excused.) [124]

Testimony of Arthur Nissen, for Libelant.

ARTHUR NISSEN was called as a witness on behalf of libelant, and having been first duly sworn, testified as follows:

Direct Examination by Mr. CAMPBELL.

Mr. CAMPBELL.—I want to call this witness a little bit out of order, if the Court please, from the fact that he wants to get back down the river to his home.

Q. How old are you, Mr. Nissen?

A. Twenty-four years.

Q. Do you recall the evening or night of the collision between the "Elder" and the "Kern"?

A. Yes, sir.

Q. What business were you engaged in at that time? A. Fishing.

Q. What kind of fishing?

A. Salmon fishing.

(Testimony of Arthur Nissen.)

Q. Where were you at the time of the collision?

A. Well, I was about abreast of the Eureka cannery.

Q. Can you locate the Eureka cannery upon this chart?

A. Yes, sir; if it is there. (Witness looks at chart.) This is Eureka cannery here, of course, where it should be (indicating).

Q. Marked Eureka Packing Company, upon Exhibit 5? A. Yes, sir.

Q. Have you any recollection of the collision itself?

A. Well, only what I heard; that is all; just the signals.

Q. Where were you at the time of the collision?

A. I was abreast of the Eureka cannery.

Q. How far on the stream? [125]

A. Well, I should judge a mile out from shore, about in the middle of the river.

Q. Had you seen the "Elder" pass down?

A. Yes, sir.

Q. How close to you did she pass?

A. Well, I could not tell you exactly.

Q. Did you see the tugs "Hercules" and "Daniel Kern"? A. Yes, sir.

Q. Could you see the tugs themselves or just the lights?

A. Well, I could see the lights. When they passed me there I could see the tugs too.

Q. Did the tugs ever pass by you?

A. Which tug do you mean?

(Testimony of Arthur Nissen.)

Q. The "Kern." Where were you with respect to the "Kern"?

Mr. DENMAN.—Upstream or down?

A. Well, I was more out. I was out in the river, you see, and she passed down the river inside of me.

Q. Which did? A. The "Kern."

Q. Then you were upstream from the collision?

A. Yes, sir.

Q. Which steamer do you refer to as the "Kern"?

A. The one that had the loaded barges, the one that came up close.

Q. Whereabouts did the collision take place?

A. Well, it was right abreast of Hapgood's Light.

Q. What do you call the Hapgood Light?

A. The Government light just above Waterford Cannery. It is known as the Hapgood Light by the fishermen.

Q. Is it known by any other name?

A. I never heard any other name for it, no. [126]

Q. How far above the Waterford Cannery?

A. Well, it may be a quarter of a mile. I could not tell exactly.

Q. Did you hear any whistles exchanged between these vessels? A. Yes, sir.

Q. What did you hear?

Mr. DENMAN.—Now, between what vessels do you mean?

A. The "Elder" and the "Kern." Isn't that what you mean?

Q. Yes.

A. I heard the "Elder" blow one whistle; the

(Testimony of Arthur Nissen.)

“Kern” answered with four and the “Elder” blew one whistle again and the “Kern” answered with four.

Q. How long an interval elapsed between the various whistles? A. Well, probably a half a minute.

Q. How did you know a collision had taken place, if you did know?

A. I heard it and I could see the “Kern’s” lights. They all disappeared, so I knew that she sunk.

Q. What kind of a night was it?

A. It was a bright starlight night.

Q. How was the wind? A. There was no wind.

Q. How was the current or tide in the river at that time?

A. Well, I think it was most slack, almost to a stand; it might have been going down just a little.

Q. What were you doing at the time that you heard the whistle?

A. Well, I was drifting with my net in the boat.

Q. What?

A. I was drifting with my boat out in the river.

Q. Did you have your nets out?

A. No; I had my net in the boat. [127]

Q. Why didn’t you have your net out?

A. Well, there were so many steamers around there that I picked up. I was afraid they would run through it, and then I was waiting for them to get by before I laid it out again.

Cross-examination by Mr. DENMAN.

Q. How old are you? A. Twenty-four years.

Q. You are now twenty-four years of age?

(Testimony of Arthur Nissen.)

A. Yes, sir.

Q. How long had you been fishing that night?

A. Well, I had been fishing since about eight o'clock.

Q. How many steamers did you see that night? You say you saw a lot; how many were there?

A. Well, at that time there was—let's see; well, I think there was five.

Q. Five steamers; that is, within about a quarter of an hour?

A. Well, yes. Might have been a half an hour between the time I saw the first one until I saw the last one.

Q. What were the names of those steamers?

A. Well, there was the "Elder," the "Kern," and the "Samson" and the "Hercules" was four, and then there was another boat on the other side of the river with a raft; I don't know what the name of that one was.

Q. She had what? A. She had a raft in tow.

Q. What whistles did you hear from the "Hercules"? A. She blew one whistle.

Q. When was this?

A. This was before the collision. [128]

Q. How long before?

A. Well, I don't know just how long it was; it could not have been very long.

Q. And how many more did she blow after that? When did she blow her next whistle?

A. That is the only one I heard her blow, just one whistle, that I remember of. She blew one whistle

(Testimony of Arthur Nissen.)

to pass this "Geo. W. Elder."

Q. Now, then, how many whistles did the "Elder" blow then? A. She blew one.

Q. She blew one. How long was that before the collision? I am testing your memory now as to the events of that night.

A. I don't think it was over—not over fifteen minutes.

Q. Well, now, as a matter of fact, will you swear it was not a half an hour?

A. Yes, sir, I can swear it wasn't a half an hour.

Q. Will you swear it wasn't twenty-five minutes?

A. Well, yes, I can, because I know just about how far she had to go.

Q. Well, how much was it? How many minutes was it?

A. Well, I can't tell exactly, but I am positive it could not have been twenty-five minutes. I would not say any less than that.

Q. I see; then it was about twenty-five minutes? It wasn't over that?

A. Not over that. That is not in my mind now, because I know about the distance she went. Of course, right after that time I might have remembered it better.

Q. Well, of course, there was nothing up to the time of the collision that would lead you to watch these whistles, was [129] there, up to the time of the collision?

A. Well, yes; I always kept myself pretty well posted on whistles.

(Testimony of Arthur Nissen.)

Q. How about the night before that? What whistles did you hear then?

A. Well, I don't remember that. I can't remember every whistle I hear every night in the world.

Q. Well, then, I am asking you; you say you keep yourself well posted as to whistles; there was nothing up to the time of the collision that led you to watch these various whistles, was there?

A. Well, no, not exactly, any more than just keeping myself posted on whistles; that was all.

Q. Now, how soon after the collision did you discover there had been one? How long after it was it you discovered it?

A. Well, I discovered it the next morning at daylight, but I knew there, I was positive at the time when it was sinking what happened, because I could see her going down; that is, I could see the lights going out of sight.

Q. That was about fifteen minutes after this exchange of whistles that she went down?

A. Which whistles do you mean? I heard so many there.

Q. I am now speaking of the whistles that you spoke of as having been exchanged between the "Elder" and the "Kern," and about fifteen or twenty minutes after that—

A. (Interrupting.) Not more than that; no.

Q. So it wasn't until fifteen or twenty minutes after those whistles transpired that there was any reason for you to notice the whistles; that is correct, isn't it? A. No, it is not. [130]

(Testimony of Arthur Nissen.)

Q. Now, what was the reason that you noticed the whistles and remembered them so distinctly three years ago?

A. Well, I remembered them because there was a collision that night. That is the reason I remembered the whistles.

Q. But you didn't know there was a collision until fifteen minutes after those whistles were exchanged. Now, how did they come to be impressed in your memory?

A. Well, I say I knew there was a collision right after it happened, because I saw the lights going out of sight. Then of course I knew it sure the next morning, because I was down there and saw it, saw her mast sticking up.

Q. That was how long ago? How long ago was that?

A. That was two years ago. It was the eighteenth of August.

Q. 1909? A. 1909.

Q. So to make certain of it the next morning you went down and saw the mast sticking out of the water. You were not certain of it until you saw those masts there?

A. Well, of course, I knew for sure then all right, but then I was pretty sure of it afterward.

Q. What sort of a boat did you have?

A. I had a gasoline fishing-boat.

Q. How far were you away from this thing?

A. Well, not over a mile and a half.

Q. Might have been a mile from it?

(Testimony of Arthur Nissen.)

A. Well, it might have been a mile; not further than a mile and a half.

Q. Do you mean to say there was a collision in that river and you knew there was a collision and you saw the lights of the vessel sinking and you didn't go over there? A. Yes, sir. [131]

Redirect Examination by Mr. CAMPBELL.

Q. Did you hear any noises around there that night? A. Yes, sir.

Q. What noise?

A. I heard the "Elder" when she struck the "Kern." I heard that crash.

Q. What reason did you have for not going down there?

A. Well, what business would I have there? I had no business down there. I had business of my own to attend to up there. I was fishing. I knew I could not get there in time to help anyone.

Q. How long would it have taken you to have got down there?

A. Well, it might have taken me fifteen minutes.

Q. Did you see the "Hercules" going down?

A. Yes, sir.

(Witness excused.) [132]

Testimony of J. E. Copeland, for Libelant.

J. E. COPELAND was next called as a witness on behalf of the libelant, and, having been first duly sworn, testified as follows:

Direct Examination by Mr. CAMPBELL.

Q. How old are you, Captain?

(Testimony of J. E. Copeland.)

A. I am forty-six.

Q. Where do you live?

A. I live at 253 East Hancock Street.

Q. Portland? A. Yes, sir.

Q. Do you hold a master's license? A. I do.

Q. How long have you held it?

A. Twenty years.

Q. For what class of vessels?

A. For river vessels.

Q. Upon what rivers?

A. On the Columbia River and its tributaries.

Q. Were you aboard of the steamer "Daniel Kern" on the night of August 18th, 1909, when she was run into by the "Elder"? A. I was.

Q. In what capacity? A. As master.

Q. Where were you at the time of the collision?

A. I was in the pilot-house at the time of the collision.

Q. Were you in command of the "Kern" at the time?

A. Well, I was in command of the "Kern"; yes, sir.

Q. Well, were you in charge of her navigation?

A. I wasn't in charge of her navigation; no, sir.

Q. How long before the collision had you turned the vessel, [133] if you had done so, to someone else?

A. Not to exceed twenty-five minutes, I don't think.

Q. To whom did you turn her over?

A. To Captain Moran, pilot.

(Testimony of J. E. Copeland.)

Q. What time was that?

A. About ten minutes past twelve, between ten and fifteen minutes.

Q. And where was the "Kern" at that time?

A. She was at what we call Cape Horn, just below Waterford, Washington.

Q. What doing?

A. She was coming upstream with three empty barges.

Q. What did you do after you turned her over to Moran?

A. I walked about the deck for a few moments and talked to Captain Moran and then went into my room.

Q. Where was your room located?

A. Immediately aft the pilot-house.

Q. Can you show me from this photograph (exhibiting Libellant's Exhibit 1 to witness)?

A. Yes, sir. This room right here behind the pilot-house where those two windows are.

Q. The room immediately below the name sign on the tug? A. Yes, sir.

Q. What are the two black spots?

A. Those are windows in the room.

Q. Where was the "Kern" at the time that you retired to your room?

A. She was just abreast Waterford dock.

Q. How did you get into your room?

A. I don't remember really. I think I went around the pilot-house [134] and came into the room aft on the after side where there was a door.

(Testimony of J. E. Copeland.)

Q. What doors did your room have?

A. Had a door on the after side opening out on the deck and another door from the inside opening into the pilot-house.

Q. Where did the door on the after side open with respect to the smokestack?

A. Just forward of the smokestack.

Q. Just forward of the smokestack, and where was the door in the forward part of the room?

A. It is on the port side of the pilot-house, rather on the port side of the pilot-house and opened directly into the port side of the pilot-house.

Q. Now, what did you do upon retiring to your room?

A. I turned the light on and sat down at the table and wrote up the log-book for the day's work before I retired.

Q. Then what did you do?

A. I turned the light out and about that time we met the "Eureka" and I stuck my head out of the window and asked the pilot what vessel that was, and he said it was the "Eureka," and as she passed by I noticed she was the "Eureka." I had my head out the window.

Q. On which side did she pass you?

A. On the port side.

Q. Between you and which side?

A. Between us and the Washington shore.

Q. Where were you at that time?

A. I was in the room.

Q. I know, but where was the "Kern"? [135]

(Testimony of J. E. Copeland.)

A. Well, she was between Waterford Cannery and Waterford Light, right along close there.

Q. Now, what was the first intimation that you had of the approach of the "Elder"?

A. When I heard her one whistle.

Q. Where were you at that time?

A. I had just laid down in my bed at that time.

Q. Were you awake or asleep? A. I was awake.

Q. Did you hear any signals exchanged between the "Elder" and the "Kern"? A. Yes, sir.

Q. What signals?

A. I heard the "Elder" blow one whistle and the "Kern" immediately blew four.

Q. How long a space of time elapsed between the two?

A. Well, a very short space of time. Almost immediately as soon as the pilot could blow the four whistles he blew them.

Q. Then what happened next?

A. Then I heard the "Elder" blow one whistle again.

Q. How long after the four whistles?

A. Almost immediately.

Q. And what happened then?

A. The "Kern" blew four whistles again.

Q. How long was that after the "Elder" had blown her second one whistle? How long was the second four whistles blown after the second one whistle of the "Elder"?

A. Almost immediately after the one whistle was blown from the "Elder."

(Testimony of J. E. Copeland.)

Q. What did you do when you heard the first whistle from the "Elder"? [136]

A. Well, I raised up in bed; I didn't go out, but the pilot called to me and says, "You had better get out, Captain; I think she is going to run us down"; and I began to get out of bed at that time.

Q. Then what did you do next?

A. I was on the floor of my room when he blew the four whistles the last time, and I went into the pilot-house.

Q. How did you get into the pilot-house?

A. I went into the pilot-house from the inside door, the door that opens into the pilot-house from my room.

Q. Had you had a view of the "Elder" prior to the time of going into the pilot-house? A. No, sir.

Q. What did you do after you got in the pilot-house?

A. I looked out the starboard side, the starboard door of the pilot-house and saw the "Elder" coming astern of us.

Q. What was the position of the "Elder" at that time?

A. She was headed right for us. I could see all three of her lights burning.

Q. Just describe, if you can, a little more the position of the "Elder" as you saw her then.

A. The "Elder," as I saw her then, was heading it looked to me almost 'midships, coming down past the stern of the steamer; of course, down past the stern of our steamer, but headed almost 'midships,

(Testimony of J. E. Copeland.)

and maybe a little half of 'midships I could see all of her lights, two sidelights and her mast light, very distinctly.

Q. What did you do after you looked out of the pilot-house door?

A. I turned to the wheel, put my hand on the wheel and undertook [137] to put it over, but I found it was already hard over and lashed.

Q. When you looked out of the pilot-house door, on the starboard side, I understood? A. Yes, sir.

Q. Which way did you have to turn your head to see the "Elder"?

A. Aft, right almost back over the stern of the steamer.

Q. And what did you do after you attempted to shift the helm?

A. Well, about that time the "Elder" struck the "Kern" and threw me down in the pilot-house.

Q. What was the "Kern" doing, if anything, at the time she was struck?

A. We were making fast to four loaded barges—to three loaded barges.

Q. Fast to three loaded barges?

A. We were making an attempt to make fast to three; yes.

Q. Did you see the position of the "Kern" with respect to the barges prior to the collision?

A. I don't think I noticed the position of the "Kern" to the barges prior to the collision, because I looked on the starboard side and the barges were on the port side or under the port bow, rather.

(Testimony of J. E. Copeland.)

Q. What was the "Kern" herself doing besides making fast to the barges, if anything, at the time of the collision?

A. I had heard the pilot ring for full steam ahead and she was at that time working ahead.

Q. Where were you at the time that the bell was rung full speed ahead?

A. I was just stepping from my room into the pilot-house.

Q. And do you know whether or not she moved ahead? [138]

A. Probably moved ahead thirty or forty feet, not to exceed that.

Q. What is your judgment about the distance she moved?

A. I would not think she moved over forty feet.

Q. Did she swing any?

A. Her stern swung downstream, yes.

Q. Which way do you mean, downstream?

A. Well, her stern swung to port.

Q. Which way would that be with respect to the respective shores?

A. That would be swinging away from the Washington shore.

Q. Where would it be swinging with respect to the "Elder?" A. Swinging away from the "Elder."

Q. Captain, if the helm had been put hard astarboard and the engine had been worked full speed ahead, in your judgment could the "Kern" have gotten out of the way of the "Elder"?

A. I don't think she would at the time that I saw

(Testimony of J. E. Copeland.)

them there; they were too close. She could not possibly have gotten out of her way; that is my judgment.

Q. How soon did you see them after the last four whistles were blown?

A. Well, it could not have been more than a few seconds, because just as the four whistles were blown he gave a bell to go ahead, and that was at the time I was stepping in the pilot-house and I immediately went to the starboard side, looked aft and saw the "Elder."

Q. How far aft would you think the "Elder" was away at that time?

A. I would not think she was over forty feet.

Q. What lights could you see on her?

A. On the "Elder"?

Q. Yes.

A. I could see her green and red light and mast light, bright mast light. [139]

Q. Did you see your searchlight at that time?

A. Yes, sir.

Q. Was it in use?

A. It was. It was shining on the barges forward.

Q. It was where?

A. Shining on the barges forward, right off on the port, just a little on the port bow of the "Kern."

Q. Did you see the searchlight after it was raised?

A. After the boat was raised; yes, sir.

Q. How was the searchlight when it was raised with respect to the position it was in when shining on the port barge?

(Testimony of J. E. Copeland.)

A. It didn't look to me as if it had moved a particle.

Q. Where were you at the time the "Elder" was brought to the surface?

A. At the time the "Kern" was brought to the surface?

Q. At the time the "Kern" was brought to the surface?

A. I was there helping to raise her.

Mr. DENMAN.—By the way, have you the photographs of the cut into her?

Mr. CAMPBELL.—I think so.

Q. I will hand you that photograph, Captain, and ask you whether or not that correctly shows the position of the searchlight at the time that the "Kern" was raised? A. Yes, sir.

Q. And which way is it pointing?

A. It is pointing just a little over the port bow, past the forward mast here, just as it was she was lit the night she sunk.

Mr. CAMPBELL.—The answer charges as a defense that the searchlight was being thrown in the face of the pilot on the "Elder." That is the reason I am going into that question. I will offer this in evidence. [140]

(Thereupon said photograph was received in evidence on behalf of the libelant and marked Libelant's Exhibit 8.)

Q. What kind of a night was it, Captain?

A. It was a clear night.

Q. How was the wind.

(Testimony of J. E. Copeland.)

A. There was no wind; that is, there was none to speak of at all. There might have been a very little breeze, probably was,—nearly always is on the river at that time.

Q. How was the current in the river?

A. There was no current. It was slack water.

Q. Did the “Kern” leave the empty barges?

A. Yes, sir.

Q. Where did she leave them?

A. She left them just above what is known as Cooper’s Point light.

Q. And where did the “Hercules” leave the loaded barges?

A. She left the loads in front of the Waterford Light.

Q. And how far offshore of the Waterford Light?

A. Well, as nearly as I can guess at it, about between six and eight hundred feet.

Q. How long had you been master of the “Kern,” Captain?

A. I think I had been master of her about two years at that time.

Q. How long had you been engaged in towing those barges upon the river?

A. About four years altogether.

Q. What was your custom with respect to exchanging barges, tugs exchanging loaded for light barges and light for loaded barges?

A. In meeting the “Hercules,” which would bring the loads down the river, we would turn the empty ones adrift, the “Hercules” would hold on to the

(Testimony of J. E. Copeland.)

loads until we got turned around and down [141] almost to her, and then she would get out from between them; she would back up in order to take the headway off, so they would not drift, and she would back out and we would go in between the barges.

Q. And what, if any, was the customary place on the river where the tugs exchanged barges?

A. There really was no customary place. We always went until we met, but we usually met between Oak Point and Waterford, somewhere along in that vicinity.

Q. Between what point?

A. Oak Point and Waterford.

Q. And how far above Eureka Cannery would you say Oak Point is?

A. About two miles above Eureka Cannery, I think it is.

Q. And where with respect to Grim's Island?

A. Grim's Island?

Q. Yes.

A. Oak Point is just at the lower point of Grim's Island.

Q. Will you see if it is marked on the chart which is on the board? No; it is the hydrographic chart.

A. This is Puget Island here (indicating). It is down further.

Q. Here it is (indicating).

A. Oak Point would be right across here. That would be the Washington side, wouldn't it (indicating)?

Q. Yes.

(Testimony of J. E. Copeland.)

A. That would be right across there from Grim's Island.

Q. On the Washington shore about opposite Grim's Island?

A. The lower end of Grim's Island, yes, sir.

Mr. FULTON.—What is that, the lower end?

A. Yes, sir, opposite the lower end. It might be a little below the lower end of Grim's Island. [142]

Q. How long had you been exchanging barges on the river that way?

A. I think it was four years. I went to work on the "Samson" first for Mr. Kern, or for the Columbia Contract Company, who ran the "Samson"; was on the "Samson" one year, and then I was on the "Hercules"—I think four years.

Q. Did the "Kern" have any lights burning at that time? A. Yes, sir.

Q. What lights?

A. She had her two sidelights which were red and green; the green on the starboard and the red on the port. She had the mast light burning, and a bright light burning on the after side of her deck-house, or house aft on the upper deck.

Q. Was there any screening on the sidelights?

A. Yes, sir; there was regulation screens.

Q. How were they screened?

A. They were screened so as not to—so as one light won't *through* the light across the bow. The screens run three feet forward from the light and then there is a board on the after side of the light.

Q. Had the vessel passed inspection by the Gov-

(Testimony of J. E. Copeland.)

ernment Inspectors? A. Yes, sir.

Q. Had any change been made in the screens upon orders by the Government Inspectors?

A. No, sir, not to my knowledge.

Q. Now, Captain, after the "Elder" struck the "Kern," or, rather, just where did the "Elder" strike the "Kern"?

A. She struck her on the starboard quarter aft about sixteen feet from the after end of the "Kern," measuring from the inside of the—measuring from directly over the stern post sixteen feet forward.

[143]

Q. Where did she strike with respect to the house which is shown on the upper deck of the "Kern"?

A. She struck her just so as to run right into the after end of that house.

Q. That is, the house on the upper deck?

A. Yes, sir, the house on the upper deck.

Q. What effect did the collision have upon the "Kern"?

A. Well, it had the effect that it slued her around against the barges; she was lying alongside of them; it threw the "Kern" right around so that she lay right alongside of the barges.

Q. Which way was she headed? What way did it leave her heading?

A. It left her headed almost directly for the Washington shore.

Q. And what became of the barges?

A. The barges, two of them laid in the stream and

(Testimony of J. E. Copeland.)

the third one broke loose and drifted over against the Washington shore.

Q. Well, what did you do after the collision, after she struck the "Kern"?

A. I got off upon the barges.

Q. Which barge?

A. Off on the port barge; that is, it was the port barge of the two. It was the port barge that broke loose and drifted over to the Washington shore.

Q. And where was the port barge when you jumped aboard of it?

A. Laying right alongside of the "Kern," right along the port side of the "Kern."

Q. Speak a little louder, if you can.

A. Right on the port side of the "Kern."

Q. And from what part of the "Kern" did you get aboard of the barge?

A. From the forward part. [144]

Q. What do you mean by from the forward part?

A. From what is known as the forward gangway.

Q. Can you show us on Exhibit 1, the photograph?

A. Yes, sir. The gangway is right here (indicating).

Q. Where was the part with respect to the pilot-house? A. Forward of the pilot-house.

Q. On which deck? A. On the main deck.

Q. How far forward of the pilot-house?

A. Well, it is about, oh, twenty feet, I should judge. There is a pair of stairs that comes right down there. I came down those stairs and stepped off on the port side through this gangway.

(Testimony of J. E. Copeland.)

Q. How did the point at which you stepped off compare with the position of the main mast or the foremast?

A. On the port side and forward of the foremast.

Q. How far from the foremast?

A. Well, it is about fifteen feet, I suppose; nearly fifteen feet over forward of the foremast.

Q. Which end of the port barge did you step off on?

A. I stepped on the after end of the port barge.

Q. How long, in your judgment, did the "Elder" hang on to the "Kern," the point where she struck her?

A. Well, not over two or three minutes, I don't think.

Q. What was it that caused the "Elder" to swing around in position so she was headed towards the Washington shore?

A. You mean the "Kern" swing around?

Q. The "Kern."

A. The "Elder" striking her would naturally swing her around, so that she would head across the river. [145]

Q. Did the engine continue to work, Captain?

A. No, sir.

Q. I am referring to the "Kern's" engine, of course. Did the "Kern's" engine continue working?

A. No, sir; it was shut off before I got out of the pilot-house.

Mr. DENMAN.—How long did it work, Captain?

A. How long did it work?

(Testimony of J. E. Copeland.)

Mr. DENMAN.—Yes.

A. Oh, I suppose it worked maybe a minute, maybe not so long. It was pretty hard to tell just how long it did work.

Mr. DENMAN.—Just a short time, wasn't it,—a very short time?

A. Yes, just a short time, a very short time.

Q. How far, in your judgment, had the "Kern" proceeded ahead under her own engine?

A. Not to exceed forty feet.

Q. What did you do after you got on the rock barges?

A. Well, I stayed on the rock barges until a boat came from the "Elder" and took me off. I could not get back on the "Kern" again.

Q. Where did you go then?

A. I went aboard the "Hercules."

Q. Captain, what is the customary danger signal on the Columbia River? A. Four whistles.

Q. Four whistles, of what character?

A. Four short whistles sounded in rapid succession.

Q. How did they correspond with the four whistles which were blown by the "Kern"? [146]

A. Very good. They were blown; there was four short whistles blown in rapid succession.

Q. What depth of water, Captain, if you know, was there between the "Kern" and the Washington shore? A. There was sixty-five feet.

Q. What would you say as to the depth of water for vessels of the class of the "Elder"?

(Testimony of J. E. Copeland.)

A. There was plenty of water.

Q. And how far off was the collision from the Washington shore?

A. Well, it was between six and eight hundred feet, as near as I could get at it. I never measured it, never had any way to measure it, but that would be my judgment.

Q. How close could a steamer like the "Elder" run to the Washington shore?

A. Well, she could run within forty feet of the Washington shore.

Q. How much of the distance between you and the Washington shore was channel for a vessel the size of the "Elder"? A. Almost the entire distance.

Q. What was the character of the night?

A. It was clear; a clear night, starlight.

Mr. CAMPBELL.—I think that is all, just now.

Mr. DENMAN.—Let me ask just one question before we adjourn.

Cross-examination by Mr. DENMAN.

Q. As I understand it, after you were struck the "Elder" drove your around about ninety degrees so you were pointed right at the Washington shore?

A. Almost right directly at the Washington shore, yes, sir.

Q. And that was from pointing straight downstream around [147] into the shore?

A. Yes, sir.

Q. So when she struck you you were pointed straight downstream? A. Yes, sir.

Q. So when the manoeuver was over you were

(Testimony of J. E. Copeland.)

pointed in to the Washington shore? A. Yes, sir.

Mr. DENMAN.—That is all.

Mr. CAMPBELL.—How was the helm at that time? A. Hard aport.

Mr. CAMPBELL.—Hard aport.

The COURT.—Is that all with this witness?

Mr. DENMAN.—Yes.

The COURT.—Very well. The Court will adjourn until to-morrow morning, 10 o'clock.

Court was thereupon adjourned until Tuesday, February 6th, 1912, 10 o'clock A. M. [148]

**Testimony of J. E. Copeland, for Libelant
(Recalled).**

Portland, Ore., February 6, 1912, 10 A. M.

J. E. COPELAND, recalled by libelant.

Questions by Mr. CAMPBELL:

Captain, was any damage done to the port side of the "Kern"? A. Yes, sir.

Q. Will you describe what it was?

A. The port side of the "Kern" on the—well, you might say forty feet abaft midships, was crushed by the impact as she came between the barges and the "Elder."

Q. Looking at Libelant's Exhibit 1, whereabouts on the port side was it, if you can indicate on this exhibit?

A. Just across opposite this house; that would be about there, on the port side.

Q. Opposite which house?

A. This house, this deck-house here. It would be

(Testimony of J. E. Copeland.)

right along here on the port side.

Q. Where with respect to the rigging?

A. I would say right underneath the rigging; from the rigging aft, this way; that is a davit here; the davit was crushed in and the bulwark on this side.

COURT.—Better make some mark there to get it in the record.

A. Beginning from the rigging and running aft on the port side.

Q. You put your “D” on the starboard side, which corresponds to the position on the port side.

COURT.—This is the injury that the boat received from the dredge?

Mr. CAMPBELL.—No, from the scow; when thrown against the scow. [149]

COURT.—I meant scow, tow.

Mr. CAMPBELL.—We will later call the surveyors who will show exactly what the damage was.

A. Beginning from there and running aft, the bulwarks were crushed in right here where the shrouds come down and take hold; the bulwarks and guard were doubled over on the side.

Q. On the port side?

A. On the port side, yes, sir.

Q. And what did that damage?

A. It was from being slued around against the barges by the “Elder.”

Q. Captain, in going ahead on the “Kern’s” engines in which way would—if the helm was hard aport, which way did that slue the stern, if at all, of the “Kern”?

(Testimony of J. E. Copeland.)

A. Slue the "Kern" downstream, or away from the "Elder," and the bow upstream.

Q. Which way with respect to the directions of port and starboard? A. It would slue it port.

Q. Port? A. Downstream.

Mr. FULTON.—Slue the stern to port.

A. Stern to port.

Mr. FULTON.—And the bow to starboard?

A. Yes, sir.

Q. Which way would that be with respect to the "Elder"?

A. It would be away from the "Elder."

Q. Can you just show the Court by means of these models just what you mean?

A. The "Elder" in going down the stream was in a position like [150] this, your Honor, and the helm of the "Kern" was to port—would have a tendency to throw her in this condition, you see; throw her around in this condition, as she moved her head away from the "Elder"; if the stern was here, to throw her from the "Elder" and move in this direction.

Q. How far, in your judgment, did the "Kern" go ahead in working her engine?

COURT.—He answered that yesterday—forty feet.

A. I don't think it would exceed forty feet.

Q. Where were you when you first saw the "Elder"?

A. I was standing in the pilot-house, on the star-

(Testimony of J. E. Copeland.)

board side of the pilot-house, looking out the starboard door.

Q. If you had been master of the steamer "Kern," or if you had been in charge of the navigation of the "Kern," what would you have done?

A. I should have blown four whistles, the danger signal.

Q. What would you have done with reference to the maintaining of the position of the "Kern" as she was then?

A. I should certainly have turned her head under full steam.

Q. How would you have put your helm?

A. Aport.

Q. Why would you have done that?

A. In order to get out of the way of the "Elder."

Q. Did you hear—you didn't hear the testimony of the master— A. No, sir.

Q. —of the "Kern's" master here—the pilot?

A. No, sir.

Q. The pilot testified that when the "Elder" blew her first whistle she was this side of Cooper's Point and was headed for him, showing all three lights, that is her starboard light, her port [151] light, and her headlight. What would you have done with the "Kern" at that time if you had been in charge of her navigation?

Mr. DENMAN.—I submit this is not proper examination. That is a matter for the Court to determine. This man was not in charge of the vessel. What he would have done has nothing to do with what the man

(Testimony of J. E. Copeland.)

himself in charge did do. It is for him to explain his reason, motives and purposes. This, I think, is entirely irrelevant and calling for the opinion of the witness.

COURT.—This man is an expert.

Mr. CAMPBELL.—Calling for the opinion of an expert, if the Court please, as to navigation.

COURT.—I think I will allow it in on that ground.

A. I should have done just as the pilot did. I should have blown the four whistles and tried to get out of the way.

Q. Captain, if the “Kern” had succeeded in getting out of the way, with the “Elder” headed as she was when you first saw her, what, in your judgment, would have been the result?

A. She would have struck the barges.

COURT.—What is the object of that? To show that the “Elder” would have sustained serious damage?

Mr. WOOD.—Yes, your Honor, the idea is to show that his danger whistle would not only have regard for the “Kern’s” safety, but for the “Elder’s,” as well. Here were three barges, loaded with stone, floating in there.

Mr. DENMAN.—We were not asking to go on that side; we were asking to go on the other side.

Mr. CAMPBELL.—That is a different question, Mr. Denman, entirely.

Mr. DENMAN.—You called us to go right on the side of the vessel where you had the barges. [152]

Mr. CAMPBELL.—There is no evidence in the

(Testimony of J. E. Copeland.)

record of that, so far.

Mr. DENMAN.—We will show when you get through with this witness.

Q. When you first saw the “Elder,” Captain, what position did she occupy with respect to the “Kern”?

Mr. FULTON.—We went over that yesterday. He said she was coming right at her, amidships.

COURT.—I think we went over that.

Q. What did you mean when you said “coming right at her amidships”?

A. May I show by the models here?

Q. Yes. Record it on the paper if you will, so we may have a permanent record of it.

A. When I first saw the “Elder” she was nearly in this position, heading, you see, just about for our amidships here. In looking out the starboard side I could look back and see all three of her lights burning; as she got down to the head, just about where amidships would strike us, about this condition had we remained where we were, but when the pilot gave the blast to go ahead—

Q. Just a moment. I want you to place the models so as to show the position of the vessels when you first saw them.

A. Of course, we would consider this forty feet away here; if you consider this forty feet, that was my judgment; of course, it might have been nearer, might have been farther. The distances I am not able to judge, but you see that headed just about amidships, and looking out the starboard side of the

(Testimony of J. E. Copeland.)

pilot-house here I could see both sidelights and her mast light. That was her position when I looked out.

[153]

Mr. FULTON.—That was before you put the power on, was it?

A. No, the power was on at that time.

Mr. DENMAN.—Just put on, wasn't it?

A. Just before I looked out, yes, sir.

Mr. DENMAN.—Just on?

A. Probably been on a second or two.

Mr. DENMAN.—Probably been on a second or two. Couldn't have moved any in that time—at a standstill.

A. As soon as a vessel of that description turns a wheel she begins to slue almost immediately; even before she starts ahead she will begin to slue, because the power pulls on that rudder or wheel.

Q. What do you mean when you say the vessel begins to slue? A. She will begin to turn this way.

Q. Which direction?

A. Downstream; the stern downstream, which would be port. Her stern immediately began to swing to port as soon as the wheel began to turn.

Q. Now, Captain, after her engines were working, in what position did the "Kern" turn? Show by the "Kern's" model.

A. She turned that way. Her stern to port and her bow to starboard, in that position. More toward—so it seemed toward the Washington shore all the time.

Q. As shown by the dotted line which I now draw?

(Testimony of J. E. Copeland.)

A. Yes, sir.

Q. Did she simply turn, or what did she do?

A. For an instant she would, after she began to get under way, she would move slowly ahead, very slowly, because you understand there was a line out here, leading to this barge, which would retard her headway considerably. [154]

Q. That is the barge on the port side?

A. Yes. It would retard the "Kern's" headway considerably and she wouldn't get under headway very rapidly on account of the line that holds the barges.

Q. I understood you to say she would move on the dotted line.

Q. She would move ahead, a little, yes, until the line came tight.

Mr. CAMPBELL.—I will offer this drawing in evidence, if the Court please.

(Marked "Libelant's Ex. 9.")

Q. Captain, where, in your judgment would the "Elder" have hit the "Kern" if she had not moved?

A. About this way; if the "Kern" had not moved she would have struck her here.

COURT.—Mark it on the original.

Q. Mark with the letter "E."

(Witness does so.)

Mr. DENMAN.—Now, this letter "E" refers to the point on the solid line, not the dotted line?

A. On the solid line, yes, sir. If the "Kern" had not moved or slued around, there, in my judgment,

(Testimony of J. E. Copeland.)

is where the "Elder" would have struck her, and she come straight ahead.

Q. Captain, referring to Exhibit 4, when the steamers come down the channel, passing Waterford Light, and past Cooper's Point, which side of Puget Island do they pass?

A. Which side of Puget Island—pass on the Oregon side of Puget Island.

Q. That is the lower side, as shown on the chart.

Cross-examination.

Questions by Mr. DENMAN:

Captain Copeland, you have been a pilot on these waters, have you? [155] A. Yes, sir.

Q. What credentials have you held?

A. I have held master and pilot's license for the Columbia River and its tributaries.

Q. Were you ever on the "Elder"?

A. No, sir. I have been aboard the "Elder," but have never handled her.

Q. What sort of a wheel has she, left-hand or right-hand wheel? A. She has a left-hand wheel.

Q. What is the effect of reversing with a left-hand wheel when you are going ahead ten or twelve knots an hour?

A. Well, it would have the effect of throwing her stern starboard.

Q. And her head to port? A. Yes, sir.

Q. So that after you begin to reverse and while she is still going ahead with her momentum, the tendency would be for her to go over to her left or port?

A. Yes.

(Testimony of J. E. Copeland.)

Q. Now, that is practically universal with left-hand wheels, isn't it? A. Sir?

Q. That is practically universal with left-hand wheels, isn't it? A. Yes, sir.

Q. Is the rudder of very much use on a steam vessel when you are reversing, but still going ahead under your momentum?

A. The rudder would be of use in going ahead only; not in backing up. After the vessel gets way on her backing, then the rudder is of no use.

Q. I mean even when going ahead it isn't of very much use, is it? [156]

A. Yes, if the vessel is moving ahead at the rate of ten or twelve knots an hour it would have a tendency to slue her stern, even though the vessel was working back.

Q. What I want to ask you, as an expert, is: I understand that nearly all your profession is agreed on this—that the result of the disturbance created by the reversing at the stern when the vessel is going ahead is to diminish the power of the rudder very strongly, so it has comparatively little efficiency.

A. Yes, it would not have very much effect, of course, but still if a vessel was moving ahead at the rate of ten or twelve knots it would have some effect still.

Q. Have some effect still? A. Yes, sir.

Q. Now, let me ask you this question: How much distance would the "Elder" have to travel to turn completely around?

(Testimony of J. E. Copeland.)

A. How much distance would she have to travel to turn completely around, had the helm been hard over, do you mean?

Q. Yes.

A. Well, that is pretty hard to say. Just make a complete—

Q. I know, presuming she is going ten knots.

A. Yes, going ten knots ahead. I couldn't—it would be pretty hard to tell just how far she would travel; travelling in a circle, of course, with her helm hard over, she would not travel as fast as she would straight ahead—

Mr. WOOD.—You don't suppose reversing?

Q. Oh, no, going straight ahead. Has the power on and going straight ahead; how far would she travel in turning a complete circle?

A. I should judge at least a mile. [157]

Q. At least a mile? A. Yes.

Q. That is, the circle would be a mile around?

A. Yes, sir. That is, if she was under way, running ahead full steam, and then you put the helm hard over?

Q. Yes.

A. I would judge she would travel in a circle at least a mile.

Q. That is to bring her back to the point?

A. Yes, sir.

Q. Now, let me ask you: Suppose your course lies straight ahead and you put the helm of the "Elder" hard over to port; how much would she turn to starboard in running five hundred feet?

(Testimony of J. E. Copeland.)

A. Probably the length of her.

Q. That is three hundred feet to the starboard?

A. I don't think she is three hundred feet long, is she? Probably two hundred feet.

Mr. FULTON.—She is over two hundred feet. I think in the neighborhood of two hundred and fifty.

A. I don't know just how long she is.

Mr. FULTON.—(To the Pilot.) What is it?

PILOT.—Two hundred and fifty.

Mr. FULTON.—Two hundred and fifty feet, the pilot says.

Q. Suppose you double the distance. Suppose going a certain course with the boat's helm hard aport and you run one thousand feet, how much will she turn off the course?

A. That is pretty hard to tell, because when you put the vessel's stern hard over she slows up. She doesn't run full speed. Besides that, the water has all the effect on one bow, and it has a tendency to slow the vessel. It is pretty hard to tell.

Q. It would be a great deal more than two hundred feet, of course, in that time. [158]

A. Yes, it would be more than two hundred feet.

Q. Possibly four hundred feet? A. Likely.

Q. You wouldn't want to contradict our experts, if they were to testify that way?

A. No, I would not undertake to contradict an expert on that; because I never tried it.

Q. Well, you have no doubt in your mind, though, that if a man had five hundred feet to travel and he was going at the rate of ten or twelve knots, that

(Testimony of J. E. Copeland.)

he could throw his boat over a couple of hundred feet in this five hundred feet?

A. He ought to be able to throw it over that far.

Q. Who did you have on the "Kern" that night?

A. What did we have on the "Kern"?

Q. Whom did you have—what men.

A. Captain Moran, the pilot; Ed Anderson as mate, and C. W. Spaulding as Chief Engineer, Hans Jensen, Assistant Engineer, four sailors.

Q. What were the names of the sailors?

A. Let's see; there was Paul Lipp, Arne Arneson, Mike Nimm—I believe I have forgotten the other sailor's name.

Q. Who were on deck at that time?

A. All the sailors, and the mate was on deck.

Q. That is Anderson? A. Yes, sir.

Q. He was the chief officer in charge at that time?

A. Yes, sir, he was in charge of the deck. Besides this, there were two firemen, two oilers, and the messboy, and the cook.

Q. They weren't out on deck?

A. They were not on deck. [159]

Q. Now, do you recollect testifying before the United States Inspectors that before you applied any power—I will find the exact place in a minute, but I think you will recall the testimony—before you applied any power on the "Kern" she was pointing a little towards the Oregon shore, and that the effect of applying your power was to make her point straight up and down the stream? Do you recall that testimony?

(Testimony of J. E. Copeland.)

A. No, sir, not that I gave.

Q. I will recall it to you. Page 19, the Captain—"He came on deck at about ten minutes past twelve, and of course practically took charge of the boat. I was on deck sometime afterwards, a few minutes afterwards. Q. Now, how was the helm of the 'Kern' at the time? A. When I got into the pilot-house the helm was hard aport. Q. Hard to port? A. Yes, sir. Q. That would send her"—Senator Fulton was asking—"That would send her across the channel—"

Mr. WOOD.—Is this the testimony before the Inspectors?

Mr. DENMAN.—Yes.

Q. (Continued.) "That would send her across the channel towards the north bank or the Washington shore."

A. That is right, but you said—

Q. One moment. That was the question to you. The answer is, "Well, it would swing her straight. She was a little, might have been just a little bit thwartships of the channel and by putting the helm hard to port would swing her directly up and down the channel or swing it toward the Washington shore" So that the result of that testimony, is it not—I am asking you—that it would swing her toward the Washington shore, and finally get her straight up and down in the channel.

A. Yes, but you said the Oregon shore a moment ago. [160]

Q. It must have been pointing to the Oregon shore

(Testimony of J. E. Copeland.)

if by putting the helm hard aport it would swing her straight up and down the channel—must it not?

A. Not necessarily. You understand—

Q. One moment, I will disclose my ignorance when we get further along. Now, you say that the effect of applying a power would be to throw her head to the right? A. Yes, sir, to the Washington shore.

Q. I am going to ask this question again. I am asking if it is not true? A. All right.

Q. The effect of applying your power is to throw your head to the right, is it not? A. Yes, sir.

Q. Now, if the result of applying that power would make her head straight up and down the stream, she must have been to the left, must she not?

A. Well, she might have been to the left. You see the stream makes a bend there. You understand the stream makes a little bend there, before we go straight down, across to the Oregon shore.

Q. Let's see what that bend is.

A. Well, a very slight bend, you see. (Illustrating on Libellant's Ex. 4.) You see, we were out here, down this way; then we would necessarily have to come down through here and come across here, this way.

Q. So if you were pointing straight down the channel you would be pointing toward the Oregon shore, would you not?

A. Well, might be pointing a little towards the Oregon shore at that place. [161]

Q. Then when you said, "It would swing her straight. She was a little, might have been just a

(Testimony of J. E. Copeland.)

little bit thwartships of the channel, and by putting the helm hard to port would swing her directly up and down the channel”—when you said “thwartships of the channel,” you must have meant that she was thwartships towards the Oregon shore, mustn’t you? A. No, sir, I don’t think so.

Q. Then how could you, swinging her head to the right, swing her up and down the channel unless when she had previously been thwartships she was pointing to the Oregon shore?

A. Does that evidence say up and down the channel?

Q. It does. I will read it again. “She was a little, might have been just a little bit thwartships of the channel, and by putting the helm hard to port”—which you say would swing her in this direction. (Indicating.) A. Yes, sir.

Q. (Continues reading.) “Would swing her up and down the channel.”

A. If that was her position that is what it would do.

Q. This is what you testified before the Inspectors, is it not? A. To the best—

Mr. CAMPBELL.—I think you should read the whole answer.

Mr. DENMAN.—I read it all the first time.

Mr. CAMPBELL.—But you didn’t read it all the second time. I think you should read it all.

Q. Of course in going over, you would be going over from the Oregon to the Washington shore, wouldn’t you? But your testimony is that it would

(Testimony of J. E. Copeland.)

swing her straight up and down the channel; she would be going from the Oregon shore to the center of the channel. That is correct?

A. That would be correct, if that is the evidence.

[162]

Q. Now, I have Libellant's Exhibit 9 before me, and I see here that you have drawn the relative position of the "Elder" and the "Kern" in the solid lines, before the "Kern" had moved. That is correct, is it not? A. Yes, sir.

Q. Now, where, you usually had met these others about at Eureka, had you not?

A. No, not usually. We were just as liable to meet her at Waterford Light as at Eureka. We met along there within two or three miles of that place most any place. We had no regular place of meeting. We went until the boats met. Sometimes went as far up as Stella.

Q. As a matter of fact, you hadn't met at this place for some time. You had been meeting somewhere else?

A. No, I don't think so. I think we had met there regularly for three or four nights.

Q. At that place? A. Yes, sir.

Q. You testified otherwise, I think, Captain. I will look it over.

A. Of course, if I had my log-book here I could tell exactly, but the log-book went down with the boat. But to the best of my knowledge we had been meeting along there for several nights.

COURT.—Was the log-book lost?

(Testimony of J. E. Copeland.)

A. Yes, sir; lost with the boat.

Q. How was this combination of tug and barges located with reference to the middle of the channel at that point that night?

A. They were a little on—just on the out edge of the channel I presume, if you could define the channel. There is really no defined channel at that place—deep water clear across [163] the river, but we were sunk in sixty-five feet of water, if I remember correctly, and in sounding two hundred feet from the stern of the “Kern” out toward the Oregon shore, in two hundred feet it ran from sixty-five feet to forty-five—up to forty-five.

Q. Well, forty-five feet of water is plenty of water for anything coming in this? A. Yes, sir.

Q. Then you were exactly, or nearly exactly, or just exactly in the fairway of where the ships run?

A. No, we were outside. Were a little outside of where the ships usually run.

COURT.—To the south?

A. To the southerly, toward the Oregon shore.

Q. Now, Captain Copeland, don't you recall testifying before the United States Inspectors as follows: The same question was put to you I have just put to you. “How were you located with reference to the middle of the channel at that point that night. A. I think, Senator, we were just exactly, nearly exactly in the fairway of where the ships ran.”

A. Well, the ships ran clear across there, you understand.

Q. One moment, let me put the whole statement in.

(Testimony of J. E. Copeland.)

A. Very well.

Q. (Continues reading.) “They usually run just about as nearly as I could tell, about eight hundred feet off shore there; that is, some of them do; some of them run closer; some of them further out.”

A. Yes, sir.

Q. (Continues reading.) “We don’t all run quite the same place there; the water is very deep and there is room enough for them [164] to run almost any place.” A. Yes, sir.

Q. (Continues reading.) “You were practically then in the fairway? A. I was practically in the fairway, yes. I think about where all the ships aim to run.” Now, you remember testifying to that, don’t you?

A. I remember testifying to that, yes, sir, and after—may I make a statement?

Q. Yes.

A. After having made the testimony, I did the sounding. I had never sounded the channel at that place before, and I found that we were just at the out edge of where the sands begin to rise to over toward the Oregon shore. After I made the soundings—

Q. You didn’t have to sound to tell where the ships had been running before that?

A. Pretty hard to tell just exactly where they ran; of course they may run in a little ways; they may run out at that place, but there is no range to run on. No lights to run on there.

Q. But coming around from the two curves, they

(Testimony of J. E. Copeland.)

take the shortest route, don't they?

A. No, if they took the shortest route, they would run in close to the Washington shore.

Q. I mean as short as practicable? A. Oh, yes.

Q. So when speaking of the fairway of ships, you are speaking of the fairway with reference to the ordinary course of commerce on the stream, weren't you? A. Yes.

Q. And that was directly in the fairway of the ordinary commerce of the stream—the usual course vessels take to go up the river and the shortest distance. That is correct, isn't it? [165]

A. In a way, I suppose it is.

Q. What way is it not correct?

A. Because they are liable to run any place in that place. There is no defined channel there; we have no defined channel at that place. No range by which ships—

Q. I am not talking about the channel, I am talking about the fairway.

A. The fairway is the channel.

Q. Take a big harbor, where there is no question about depth at all; the fairway is the regular route.

A. Then if there is no question about the depth, that would be channel all over the river.

Q. There is no question of depth between these two shores; you could travel anywhere there, couldn't you?

A. If a vessel didn't draw over thirty feet she could go anywhere.

Q. Have you any vessels on this stream drawing

(Testimony of J. E. Copeland.)

over thirty feet? A. Not that I know of.

Q. You never heard of any? A. No, sir.

Q. A vessel could travel anywhere between these two shores? A. Practically.

Q. When you speak of the fairway on this you don't have reference to the depth of the water but have reference to the lines of travel, don't you?

A. Yes, a person would have reference to lines of travel, but there is eight hundred feet in which they may travel in that place and do travel in that place.

Q. There are four thousand feet in which you could travel in that place? [166]

A. I don't know if that wide.

Q. Over three thousand feet? A. Yes, sir.

Q. So when you speak of fairway you have reference to the route taken by the vessels and not depth of water? A. Yes.

COURT.—Do ships run on a course as they pass that point?

A. Do they run on a course?

COURT.—Yes.

A. No, sir—well, some vessels do and some vessels do not; I don't know the compass course.

COURT.—I had a case once before where the ship was running on a course and it made Waterford Light one of its points.

A. We do that in a fog; yes, sir. We would make Waterford—make Cooper's Point light about abreast of Waterford Light. You understand, your Honor, there is something of a curve between the two lights and in running—I make two courses, in

(Testimony of J. E. Copeland.)

running a course there, in order to bring me abreast of Waterford Light and close enough to Waterford Light that I may be able to see the light when I get abreast of it.

COURT.—What is the course at the point where the collision occurred?

A. I presume most everybody has a course, but you understand the compasses don't run the same; one compass may run a quarter off or a half off to what another compass will.

COURT.—Do you have a course to run down there?

A. Yes, sir.

COURT.—How near does your course come to where this collision occurred?

A. Just on the inside of the line there. It would bring— [167] well, probably three hundred feet inside where the collision occurred.

COURT.—That is towards the Washington shore?

A. That is towards the Washington shore, yes, sir.

COURT.—That is your course?

A. That is my course.

COURT.—Do you know the “Elder’s” course?

A. No, sir.

COURT.—What was the course of ships generally?

A. No, sir; I could not tell, because I have never piloted any of these deep sea vessels.

Q. Of course, you meant it when you said before the Inspectors that your vessel was right in the fairway at the time?

A. Of course, I meant what I said. I meant the

(Testimony of J. E. Copeland.)

vessel was in a place where any vessel could run.

Q. Well, now, you say "any vessel could run."

A. Any vessel that plies these waters could run where I was.

Q. Well, isn't that really where they aim to run?

A. I don't know about that now, whether they aim to run in that one particular place or not, because I have seen them much closer to the Washington shore, and I don't know that I ever saw them any farther out.

Q. Now, do you remember your answer as follows: "I was practically in the fairway. Yes, I think about where all the ships aim to run"?

A. Probably. I have seen them much closer.

Q. Then you did say you were just where the ships aimed to run? A. To the best of my knowledge.

Q. Then you were not a little ways out of it, were you? [168] You were in it, just where they aim to run. That is correct, isn't it?

A. So far as I know. I said a moment ago I had never piloted any of these deep water vessels, except when a pilot was along with us.

Q. You see, Captain Copeland, I asked you if you thought that was where the ships aimed to run. You said no. I now ask you whether that was to testimony you gave. You say yes. I want to know which you mean.

A. Well, you misunderstand. I tried to explain to you they don't run in the same place all the time, and I think I said so before the Inspectors. If I

(Testimony of J. E. Copeland.)

didn't it was an oversight, because it was the intention.

Q. Now, you said, "They usually run, just about as nearly as I could tell, about eight hundred feet off shore there, that is some of them do. Some of them run closer and some of them farther out."

A. That is what I said now.

Q. Now, it would have been perfectly safe and secure for you to have run the barges, for the purpose of exchange, half a mile from the Washington shore that night, wouldn't it? A. Oh, I think so, yes.

Q. The weather was perfectly still, wasn't it, practically? A. I think so.

Q. I mean there was no current?

A. There was no current to speak of.

Q. Now, you say, Captain, that you had been—that it was your custom to—that before that you had been exchanging these barges at this point in the river or about this point in the river. [169]

A. Yes, we had exchanged there a good many times.

Q. I mean about this time when this thing occurred. A. Yes, sir.

Q. Before the United States Engineers: "You say that you have usually made up or exchanged tows in that vicinity? A. In that vicinity, yes. Sometimes higher up, occasionally lower down. Not very often lower down, more times higher up. Q. As a rule, higher up? A. Yes, as a rule. Q. At what point?

A. Well, for I think six or seven trips right in succession, we didn't vary a half a mile from Eureka, which is about two miles higher up than where we

(Testimony of J. E. Copeland.)

met on the night of the 18th—or the morning of the 18th.” Do you remember that testimony?

A. Yes, sir.

Q. Well, then, you had been, just preceding that, been exchanging these barges at this point?

Mr. CAMPBELL.—We submit that the testimony does not state anything of that kind, if the Court please.

COURT.—Let me ask a question. Had you or had you not?

A. Had I or had I not been exchanging at that point?

COURT.—Yes.

A. Just as I said in the testimony before the United States engineers.

Q. That is all right? That testimony is correct, then, is it?

A. As nearly as I remember. Of course, I don't know where we had exchanged the two or three nights prior. As I said a moment ago, I could tell if I could get my log-book, but that is impossible.

Q. Now, your practice in exchanging was for the tug having the heavy barges, or loaded barges, to wait alongside until [170] the other tug came along, was it not?

A. Not alongside, no, sir, but waited in the river. Waited in the river until we let go the empties and went back down to the lights.

Q. What do you mean by “waited in the river”?

A. Well, waited in the river any place we would happen to meet. The “Hercules” would stop and

(Testimony of J. E. Copeland.)

drift along until we would let go the empties. Sometimes be half a mile up the river from us before we got clear of the empties. We turned around and backed down and before we got there she would pick up and take the headway off the barges so they would be as steady as possible as we went to go between them and as we get probably two or three hundred feet off her stern she would back out and we would take our place.

Q. She would not back up until you came right down there so you could slip in?

A. Yes, would hold on until we got near to her, probably two or three hundred feet away.

Q. You were not awake then?

A. Yes, I was awake, but wasn't up.

Q. You don't know whether it was so this night or not? A. I could not say.

Q. You are not in position to contradict the testimony to the effect that this was an exception this night and it wasn't done this way?

A. I don't know whether done a different way that night because I wasn't out of my room. I was awake when we exchanged.

Redirect Examination.

Q. Captain, what width of channel was there between the "Kern" and the Oregon shore of sufficient depth for the "Elder" to have navigated? [171]

A. To across within fifty or one hundred feet of the Oregon shore.

Q. How wide in your judgment would that channel be?

(Testimony of J. E. Copeland.)

A. I would say that channel at that place is probably one mile—something over a mile wide—at least a mile wide at that place, from one shore to another.

Q. What was the width of the channel between the “Kern” and the Washington shore of sufficient depth for the “Elder” to have navigated?

A. Well, I believe I have said the distance was about eight hundred feet from the Washington shore to where the “Kern” sunk and the “Elder” could have run—well, I think I said yesterday the “Elder” could have run within forty feet. I don’t know if it could have run within forty feet or not, but am sure she could have run within one hundred feet of the Washington shore and think could have run within forty feet of it, because the water is very deep and the bank is very bluff at that place.

Mr. CAMPBELL.—I want to read into the record the complete answer to the question to which Mr. Denman read a part.

Mr. DENMAN.—I beg pardon, I read every portion of it.

Mr. CAMPBELL.—Not at the time I asked you to.

Mr. DENMAN.—I am glad to have it in, so long as it shows. What I object to is the statement that I didn’t read it in.

Mr. CAMPBELL.—You have no objection to my reading it in?

Mr. DENMAN.—No objection except to the statement that I didn’t read it.

Mr. CAMPBELL.—Not at the time I asked you to.
[172]

(Testimony of J. E. Copeland.)

Mr. CAMPBELL.—(Reading:) “Q. That would send her across the channel towards the north bank or the Washington shore? A. Well, it would swing her straight. She was a little—might have been just a little bit thwart ships of the channel and by putting the helm hard to port would swing her directly up and down the channel or swing her toward the Washington shore.” That is the latter part that was left out at the time I asked to have it in.

Mr. DENMAN.—Of course “swing toward the Washington shore” was going from the Oregon shore and was going straight up and down the channel.

Q. Mr. Campbell asked you to give us a little law, and I am going to ask you as an expert some questions. Suppose this situation: That the “Kern” is pointing a little bit ’thorships the channel, as you have described here, towards the Oregon shore, and the “Elder” coming downstream so that she will split her in the middle fore and aft from behind, you are standing by the pilot-house and you turn around and you hear one signal whistle and see that the vessel is a thousand feet directly astern, how long would you have to watch the approaching vessel before you could determine whether or not she was swinging to pass you to starboard?

A. How long would I have to watch the overtaking vessel? Well, that would depend on a good many things. It would depend on how far they put their helm, in the first place. If they put their helm hard over the probabilities are I would not have—the probabilities are that I would not have to watch her

(Testimony of J. E. Copeland.)

over a half a minute.

Q. I see. Now, suppose that if she properly executed that [173] maneuver, that is to say, she gives one whistle and puts her helm over—by the way, what is the beam of your vessel?

A. Twenty-six feet.

Q. If she was going to split you right in the middle, it would be thirteen feet clear, wouldn't it?

A. Yes.

Q. Suppose you are looking at the "Elder" to see whether or not she is executing that maneuver to go to starboard and clear you—there was plenty of room to clear you on this night, of course?

A. Yes, sir.

Q. On the Washington shore, or towards it. Suppose you were looking at her, you think it would be half a minute before you could tell whether she was swinging to execute that manoeuver?

A. I think it would, because she would necessarily have to swing enough in order to throw her mast light out of line with the vessel or shut off her starboard light.

Q. Now, you would have to wait that long before you determined whether you would permit her to come?

A. That would depend altogether on how they handled their helm.

Q. Depend altogether on how they handled their helm? A. Yes, sir.

Q. Now, after a man has requested you for permission to pass your starboard, how soon can he begin to

(Testimony of J. E. Copeland.)

execute the maneuver? Must he begin at once, as soon as he asks permission?

A. I believe that is the law.

Q. That is your understanding of the law?

A. Yes, sir.

Q. Before he gets your answer he must begin to maneuver at once?

A. He must put his helm over when he blows his whistle.

Q. That is your understanding of the law? [174]

A. Yes, sir.

Q. And it is on that understanding of the law that you said you would have done exactly the same thing that Mr. Moran did on that night? A. Yes, sir.

Q. Basing your answer on that condition of the law? A. I believe so.

Q. Of course there was plenty of room in a thousand feet for the "Elder" to have cleared you?

A. Yes, there was plenty of room.

Q. I mean when she was a thousand feet away she had plenty of room?

A. She had plenty of time to clear us; yes, sir.

Q. And plenty of room to pass?

A. Plenty of room to pass on either side.

Q. Well, but on the other side of you were these three barges; is that correct?

A. No, not when the "Elder" blew her whistle to pass they wasn't on the other side of us; they were almost ahead of us. You understand, we were lying with our head to the barges and had a line on the barges. The barges had not turned around at all

(Testimony of J. E. Copeland.)

after the "Elder" struck us. Then they was on the port side of us after that.

Q. Don't you know the barges were lying pointing towards the Oregon shore on the port side of your vessel?

A. Slightly. But didn't I say also the vessel was pointing towards the Oregon shore?

Q. Well, that is correct, is it?

A. That is my evidence.

The COURT.—You mean the "Kern"?

Mr. DENMAN.—The "Kern." [175]

The WITNESS.—That is the evidence just given.

Q. The "Kern" was pointing towards the Oregon shore?

A. Not as much, however, as the barges. You understand they were not as much as the barges, because the barges were lying a little across our bow, or rather we were lying across the stern of the barges a little.

Q. In other words, in looking downstream behind you the barges were on your port side?

A. A little on the port bow, under the port bow of the "Kern," the stern.

Q. Well, they were on the port side of the "Kern," were they not?

A. The stern of the barges were.

Q. Now, let me ask you to examine Exhibit Number Five.

The COURT.—It is Number 6, isn't it?

Mr. DENMAN.—Yes.

Q. (Continuing.) This is the Oregon shore here

(Testimony of J. E. Copeland.)

(indicating). A. Yes, sir.

Q. These are the barges pointing towards the Oregon shore (indicating). A. Yes, sir.

Q. And the "Kern" was here (indicating): Is that correct?

A. That is correct, as near as I can get at it.

Q. Then the barges were on the Oregon side of you?

A. There were some on the Oregon side, as I stated; they were under the port bow, you understand. Here is the stern of the barges. Now, when we were struck we moved around alongside of them; we were not lying alongside of them before we first struck.

Q. Now, coming down the stream, then, the "Elder" would have these barges obstructing her on the port side and nothing to obstruct her on the starboard; that is correct, isn't it? [176]

A. Draw a line across there and we will see how much obstruction she would have. She would not have had any obstruction, to speak of, from the barges.

Q. Do you suppose for a moment she was going to run on the Oregon shore down here?

A. No; but she had plenty of room to come around us on either side. Here is the Oregon shore three-quarters of a mile from us, probably, on the port side.

Q. I know; she was coming down the fairway, the regular run of ships, and the positions you had in that run of ships, as I understand it, was one where your barges were on the left-hand side in the fairway

(Testimony of J. E. Copeland.)

and on the right-hand side there was nothing in the way; that is correct, isn't it?

A. If you are a mind to term it that way; but if you draw a line straight down you will see there is nothing in the way on the port side.

Q. Then there was nothing in the way on either side? A. Practically nothing.

Q. That is an astonishing statement. How long are those barges?

A. One hundred and fifty feet.

Q. One hundred and fifty feet; you call that nothing?

A. Well, a hundred and fifty feet isn't very much in a mile.

Q. Oh, I see; but it is very much on the line of travel, isn't it?

A. Well, not where there is plenty of room, it isn't.

Q. But if the line of travel from point to point down the river is practically eight hundred feet from the shore, as you stated, a barge a hundred feet across that line of travel is an obstruction, isn't it?

A. It would be considered an obstruction, I suppose. [177]

Q. Yes. So the obstruction of the barges was on the left-hand side, your port side rather than the starboard side? A. Yes, sir.

Q. Yes; I am glad to get that far. Now, suppose a vessel is coming down the stream and asks to pass to the starboard of the other vessel, which is ahead of her, and she gets a four whistle signal from the other vessel, what must she do?

(Testimony of J. E. Copeland.)

A. She must put her engines full speed astern, immediately.

Q. And in the case of the "Elder" that would throw her, that would send her in a curve, of course, to her port, would it not? A. Yes, sir.

Q. Towards your barges?

A. Out towards the Oregon shore.

Q. Yes; at any rate towards your port side.

A. Yes, towards our port side.

Q. The result of that maneuver in this case was that she struck you in the condition shown by the model here? A. Yes, sir.

Q. Now, how could she have been directly behind you and cut you in that position, if she had been swinging on a curved course from your starboard towards you?

A. If she had been swinging, but had she been? If she had been swinging when I saw her she would have missed us, but she was not swinging when I seen her.

Q. All right. So that the statement of Michael Moran to the effect that she had been swinging for some time, and he knew it before he moved his vessel, is incorrect?

A. I don't know that that is incorrect. I could not say about that. He probably had a better view of her; he had a longer view of her than I had. That is sure, because I had only just [178] came on deck when I noticed her at the stern.

Q. I am correctly stating that, though; if she had been swinging she must have come over from the

(Testimony of J. E. Copeland.)

starboard side? If that be true that she had been swinging, she must have come over from your starboard?

A. She must have come over from our starboard. Her bow must have come over from our starboard,

Q. Yes; had she been swinging to port?

A. Yes, sir.

Q. Then she must have been astern of you on your starboard side? A. Yes, sir.

Q. To have been swinging and striking you in the position that she struck you?

A. Well, yes; she must have been slightly on the starboard end of us before she started to swing.

Q. Exactly. A. Yes.

Q. That is correct?

The COURT.—How would the “Elder” swing?

A. The “Elder” would swing with her stern towards the Washington shore and her bow towards the Oregon shore. It would be what we term swinging to starboard.

Mr. DENMAN.—Here is the maneuver. (Counsel illustrating with wooden models.) Now, she is moving ahead like that; as soon as you begin to reverse the propeller the effect is to throw her like that (illustrating).

The COURT.—To port?

Mr. DENMAN.—To port; and as she moves down she moves in a curve like this (illustrating).

The COURT.—I see. [179]

Q. Now, if she is swinging, and the captain says it is true that she was swinging—he thinks it wasn’t—but if it is true that she was swinging she must

(Testimony of J. E. Copeland.)

have come over from the starboard side of the stern to get in like that to have made the wound that was made on the other vessel; that is correct, isn't it?

A. That is correct; but you must understand the "Kern" was swinging; so it would have swung her stern away from the "Elder."

Q. I know; you said the "Kern" as the result of her manoeuver would be pointing straight up and down, because she had been pointing a little towards the Oregon shore. Now, if she points straight up and down the stream that must have been straight from her to starboard? I mean, if they were swinging she must have been over here to starboard to have made the wound in that position, mustn't she?

A. You must understand the "Kern" was swinging; the way the "Kern" was swinging would bring her in that position whether the "Elder" was swinging or not.

Q. But you said the result of the swinging of the "Kern" would bring her straight up and down stream when she was pointing over towards the Oregon side; the result would be—

Mr. CAMPBELL.—(Interrupting.) He didn't say that. You leave out a very significant part of that answer.

The COURT.—I think I understand that.

The WITNESS—Did I say she would stop swinging when she got straight up and down stream?

The COURT.—I understand the "Kern" was swinging all the time.

The WITNESS.—Until after the "Elder" struck.

(Testimony of J. E. Copeland.)

The COURT.—After the forward movement, until after the “Elder” struck her. [180]

Mr. CAMPBELL.—Yes.

The COURT.—And that the “Elder”—I don’t know; that will be developed by the testimony from the “Elder”—was probably backing and that was throwing her bow to port?

Mr. CAMPBELL.—The stern of the “Kern” and the bow of the “Elder” were both going the same direction.

The COURT.—Yes; I understand that manoeuver. Unless you want to make that plainer now, or to test the witness, I don’t think it is necessary to take up any more time about it.

Q. Suppose now we had been reversing our propeller for a thousand feet forward, that would give us a considerable curve, would it not?

A. It ought to give something of a curve, yes, sir.

Q. And in order to have struck you on the side at all she must have been coming over from the starboard side, must she not?

A. Well, the “Kern’s” movement would have thrown us to the side of the “Elder’s” bow whether the “Elder” would have been swinging or not. If the “Elder” had come directly ahead, you understand, the movement of the “Kern” would have directed the “Elder” right into our starboard side.

Q. Well, now, presuming the vessels are right behind one another and for a thousand feet the “Elder” has been curving this direction (illustrating), she would not have touched you, would she?

(Testimony of J. E. Copeland.)

A. No. If she had been backing for a thousand feet I don't think she would, because I think she would have stopped before she got that far down.

Q. So if she was curving at all and was directly behind you she was on this swinging course and directly behind you, she never would have hit you?
[181]

A. No; I don't think she would have hit us if she had been on that swinging course for a thousand feet.

Q. Well, suppose she had been on it for five hundred feet, would she have hit you if she was directly behind you?

A. Well, if she was directly behind us I don't know that she would have hit us, no; but she was a little to our starboard.

Q. You think she was a little to your starboard?

A. Yes; at least when I saw her.

Mr. CAMPBELL.—Starboard quarter?

A. Yes, sir.

Q. Then she must have been going downstream a little to your starboard?

A. I think, yes, sir; a little to our starboard.

Q. So she would have run clear of you if she had curved over?

A. Well, now, that would be pretty hard to say whether she would run clear of us or not. She would not have run clear unless she had changed her course when I seen her.

Q. How is that?

A. She would not have run clear unless she had changed her course after I seen her.

(Testimony of J. E. Copeland.)

Q. But if she was coming downstream behind you and to your starboard and traveled the usual course down the river, she never would have hit you?

A. Oh, yes; she would have hit us if she had not changed her helm when she blew her whistle. She could not have missed us if she hadn't changed her helm, I don't think; from the position she was in now, understand, when I first seen her.

Q. You were forty feet apart then?

A. Yes, we were only about forty feet apart at that time. [182]

Redirect Examination by Mr. CAMPBELL.

Q. If after the exchange of four sets of whistles the "Elder" had not changed her course, I will ask you whether or not in your judgment the danger of a collision would have been imminent?

A. Yes, sir.

Witness excused.

Mr. DENMAN.—Mr. Campbell, I should like to further cross-examine Mr. Moran before your case is closed. I thought I would tell you now so you can put him on before the other witnesses.

The COURT.—Any objection?

Mr. CAMPBELL.—We have no objection to his examining our witnesses all he wants to, if the Court please. [183]

**Testimony of Michael Moran, for Libelant
(Recalled).**

MICHAEL MORAN was thereupon recalled for further cross-examination and testified as follows:

(Testimony of Michael Moran.)

Cross-examination by Mr. DENMAN.

Q. Mr. Moran, how much did the "Elder" swing before she struck you?

A. How much did she swing before she struck me?

Q. Yes.

A. That is pretty hard question for me to answer. It would be a matter of guesswork, you know. I should judge she would swing a point or a half to a point, somewhere around there; she swung very slow, you know, as near as I could see her in the dark. It was a dark night, starlight night, a dark starlight night.

Q. She swung though sufficiently—you say only a point?

A. Well, I don't know. I wouldn't give any accurate—

Q. (Interrupting.) She swung enough to cover her lights, didn't she?

A. Well, I suppose she might. I didn't notice her immediately after she struck us when she was swinging. She might have shut out her red light; she might not.

Q. Now, as a matter of fact, didn't the red light blind before she struck? A. No.

Q. Will you swear to that?

A. No; that is right; I wouldn't swear to that. I wasn't paying any attention to her lights when she come into such close quarters as that.

Q. As a matter of fact, you did pay attention and

(Testimony of Michael Moran.)

did see her blind the red light, didn't you?

A. No, sir. [184]

Q. Do you recollect this testimony before the United States Inspectors?

A. Not at the time she struck, I didn't see her.

Q. Well, I will read you your testimony.

A. Well, go ahead.

Q. Your mind was fresh on it at that time, wasn't it?

A. Yes; right away. I might have testified to that effect.

Q. (Reading from page 55.) "And I rang full speed ahead, which would have under the conditions he was backing, and he appeared to me to be swinging and blinded his port light. His port light actually did blind from me before she struck, "which would have been making the 'Elder' swing around that way, Captain." You knew at that time how the "Elder" swung; she had a left-handed wheel?

A. Yes, sir. Well, I didn't say that her red light wasn't blinded just now; I didn't say it wasn't blinded.

Q. But when the thing was fresh in your memory you said it must have been blinded? A. Yes, sir.

Q. She must have swung quite a little bit to blind her red light?

A. Well, she probably did; but that is more than I could say, that she did swing.

Q. Well, as I understand you to say, you knew that the "Elder" had one of these left-handed wheels that

(Testimony of Michael Moran.)

would swing her to the port as she reversed; that is correct, isn't it?

A. Yes, that is correct. That is my experience with left-handed wheels, with left-handed propellers.

Q. Well, that is what the "Elder" had?

A. Yes, sir.

Q. Now, as I understood you yesterday, you said the reason why you blew the four blasts was because you could not see him [185] moving over to your starboard at the time he asked for permission to go over there with the one-whistle signal; that is correct, is it not?

A. That is correct; yes, sir.

Q. And he had abundant time to have gone over there when he was a thousand feet away without striking you, had he not?

A. He had if he had a mind to do it, yes.

Q. And your theory of the case is that before he got any response from you he should have put his helm over to port and started to make that man-eouver?

A. That is what I understand the law, to accompany the whistle by the alteration of your helm so as the other man can know what you are doing.

Q. And he must make that alteration of the helm before you have answered, giving him permission to come on?

A. He is supposed to accompany his whistle by the alteration of his helm.

Q. That is, before you give him a reply?

A. That is the way I understand the law.

Mr. FULTON.—That understanding of the law is

(Testimony of Michael Moran.)

what you based your action on in giving the danger whistle, because he didn't port his helm before you answered?

A. Yes, sir; I guess so. That is right, Senator.

Q. Now, do you recollect giving this testimony. "You must allow 'Senator,' when he blowed his one blast I waited to see if he altered his course a second or two and then gave him four blasts when I seen that he didn't deviate a particle degree, as I could see." You recollect that testimony, don't you? A. Yes, sir. [186]

Q. Before the United States Inspectors?

A. Yes, sir.

Mr. CAMPBELL.—What is the page?

Mr. DENMAN.—Pardon me. That is on page 37; and what I have got next is also.

Q. And also your statement, "Then if you did wait, whatever time you waited you waited for the purpose of ascertaining whether or not he was going to change his course, didn't you? Yes."

The WITNESS.—Yes.

Q. Then you expected him to change his course before you signified that in your judgment it was safe for him to do so, did you?

A. That was what I thought.

Q. You recollect making this statement, on page 51, "Then if you had answered his one whistle and remained where you were at, there is no question but what he would have gone by? A. Providing he had changed his course. Q. That was up to him, wasn't it? A. Yes, sir."

(Testimony of Michael Moran.)

A. Yes.

Q. You recollect making that statement?

A. I do.

Mr. DENMAN.—That is all, Mr. Campbell.

Redirect Examination by Mr. CAMPBELL.

Q. Captain, you testified that if the “Elder’s” bow was swinging to port when she was backing it would tend to shut out her port light; now, I will ask you what, if any tendency would the changing of the “Kern’s” head to starboard have upon the port light of the “Elder”?

A. Well, it would have a tendency to shut it out too. [187]

Recross-examination by Mr. DENMAN.

Q. But you did testify at that time that she was swinging?

A. Yes, sir; I saw her swinging. Before I run my engines full speed ahead I made sure that she was swinging that way.

Q. That was before you put them ahead?

A. Yes.

Q. And she had been swinging quite a little time, hadn’t she?

A. I don’t know. I wasn’t aboard of the “Elder”; I don’t know how long she had been backing.

Q. I mean she had been *swing* enough for you to see her move over?

A. Yes, sir. Enough for me to see her swinging, canting off that way. I had to wait till she got pretty close for me to find out. Now, of course all

(Testimony of Michael Moran.)

my distances there are approximate. I could not say whether these distances were really thirty or forty feet, or what they were, but as near as I could judge I give the best of my opinion on the distances.

Q. He was swinging over towards you from your starboard side?

A. She was swinging towards the Oregon shore, her head, and stern towards the Washington shore.

Q. But she was swinging, her head coming over from your starboard side, that is correct?

A. Yes, sir; that would be all right.

Q. She must have been astern of you on the starboard side somewhere to have swung that way?

A. Well, when she got down in that position she probably was. When the exchange of signals was given she was fairly well astern; probably she might have been a little bit to the starboard. Of course, a man can't exactly tell; you look out from a ship that way in a dark night, you will see her coming right [188] at you with all her three lights open and you make up your mind there is going to be a collision. From past experience in similar cases and what you have seen from time to time you naturally can't see any other way out of it, vessels getting in close quarters, that a collision is inevitable.

Q. Well, you didn't think a collision was inevitable?

A. You make up your mind it is your place to notify a man of the danger he is approaching. That was my reason for giving them four whistles, them

(Testimony of Michael Moran.)

whistles. While I said it was a thousand feet it might not have been that much and it might have been more. I could not say for certain, but judging from his masthead, the elevation of his masthead light, he was pretty close to me right from the first time he blew his whistle.

Q. Well, there was plenty of room for him, if he wanted to, to go over past you on your starboard?

A. On either side plenty of room.

Q. That is to say, he was plenty far enough away to maneuver this vessel out of your way if he wanted to?

A. Well, I should think if he slowed down and got her under control he might have done it.

Q. You say he was right behind you, going to split you up the middle, a thousand feet away?

A. Now, I told you my distances are approximated. I couldn't measure them. We will assume a thousand feet.

Q. I know you can't measure it; but I say approximately? A. Yes, that is right.

Q. Now, presuming, Mr. Moran, she is a thousand feet away, she could have turned enough in that thousand feet, with a very slight alteration of her helm to clear you, couldn't she? A. I think so.

Witness excused. [189]

Testimony of Joseph O. Church, for Libelant.

JOSEPH O. CHURCH, was next called as a witness on behalf of the libelant, and having been first duly sworn, testified as follows:

(Testimony of Joseph O. Church.)

Direct Examination by Mr. CAMPBELL.

Q. How old are you, Captain?

A. Forty-seven.

Q. Do you hold a master's license?

A. Yes, sir.

Q. Of what character?

A. Master and pilot of river steamers.

Q. On what river?

A. From Oregon City to Ft. Stevens, and to Cascades on the Columbia River.

Q. How long have you been acting in the capacity of a master and pilot on the Columbia River?

A. Since 1897.

Q. On what class of vessels?

A. Stern wheelers, mostly. I have been on tug boats, some.

Q. Were you master of the steamer "Hercules" on the night of the collision between the "Elder" and the "Kern"? A. Yes, sir.

Q. What had you been doing during the early part of the night?

A. Towing rock barges down the river.

Q. And how do you tow them?

A. Tow them one ahead of the steamer and one on each side.

Q. I will show you Exhibit 2 and ask you how you tow them with respect to the position shown by that photograph?

A. That is the way. That is exactly as the tow is made up.

Q. Is that your steamer in there? [190]

(Testimony of Joseph O. Church.)

A. Yes, sir; that is the steamer "Hercules."

Q. Where did you start with the rock barges?

A. Why, we started from Fisher's Quarry, the Columbia Contract Company's Quarry at Fisher's.

Q. Where is that with respect to Vancouver, Washington?

A. About nine miles above Vancouver, nine or ten.

Q. And where did you finally, if at all, drop the barges?

A. Well, we dropped them at Waterford, Waterford Light.

Q. About what time of night was that, if you recall?

A. Oh, I don't know; about twelve fifteen or twelve twenty, something like that; I don't know exactly the time now.

Q. Had you seen the steamer "Kern" prior to the time that you dropped the barges?

A. Yes, sir; passed it.

Q. What was she doing?

A. She passed us and then let go of the light barges.

Q. Where were you when you passed her?

A. Well, just a little above Waterford Light.

Q. What was your reason for dropping the loaded barges?

A. To change tow for the "Kern" to take the loaded ones on down and for us to take the light ones back up.

Q. Just how did you drop the barges, Captain?

(Testimony of Joseph O. Church.)

A. Stopped and backed up and killed all the headway of them; and left them lashed together.

Q. What position were they when you left them with respect to the Oregon shore and the Washington shore?

A. Well, they were headed downstream and, oh, I don't know; I could not say exactly; I suppose five or six hundred feet probably; maybe more; from the Washington shore.

Q. Did you notice where the "Kern" was when you dropped the barges? [191]

A. Well, she had already dropped her barges and headed downstream for the loaded ones.

Q. What did you do with your vessel after you dropped your barges?

A. Backed around and started back for the light ones, to hitch onto the light ones.

Q. Did you at any time see the steamer "Elder" that night? A. Yes, sir.

Q. Where were you with respect to Cooper's Point when the "Elder" passed you, if she did pass you?

A. Well, just a little below Cooper's Point, not much; I could not say; just a little below the Light.

Q. And how far offshore from Cooper's Point were you? A. How far offshore were we?

Q. Yes.

A. Oh, we were quite a piece; probably a thousand feet offshore when we passed her. She was between us and the shore.

Q. What, if any, signals were exchanged between you and the "Elder"? A. One whistle.

(Testimony of Joseph O. Church.)

Q. Who gave the first one?

A. The "Elder" did.

Q. And what, if any, response was made?

A. I answered with one whistle.

Q. How far off from the "Elder" did you pass, what distance between the two steamers?

A. Oh, I don't know; I expect a couple of hundred feet, maybe, or three hundred maybe; something like that; I could not say. We were quite a piece apart, I know.

Q. Where were your light barges at that time?

A. They were just about abreast of Cooper's Point Light. [192]

Q. Did you hear any signals given by the "Elder" after she gave you her passing signal?

A. Yes, sir; she blowed one whistle.

Q. How was she travelling at that time?

A. How was she travelling?

Q. Your speed; your relative speed?

A. Oh, I didn't pay very much attention. I suppose it was under full speed, but I could not say that she was, because I didn't pay any attention.

Q. Did you hear any response of any other steamer to the "Elder's" one blast of the whistle?

A. Yes, sir; I heard the "Kern" answer with four short whistles.

Q. How do you know it was the "Kern"?

A. Well, by the sound of the whistle, by the noise, I suppose.

Q. How long an interval, Captain, elapsed be-

(Testimony of Joseph O. Church.)

tween the "Elder's" one blast and the "Kern's" four blasts?

A. Well, I could not say that; it was pretty close, though; it was pretty close to it, just about the usual time; I suppose a quarter of a minute, maybe; I don't know if it was that long.

Q. Were there any other signals given by either the "Kern" or the "Elder"?

A. Well, the "Elder" blowed one whistle right afterwards.

Q. What did the "Kern" do, if anything?

A. Answered with four.

Q. And what time elapsed between the second series of one and four whistles?

A. Oh, I suppose a quarter of a minute, maybe; I don't know; just a short time; just as they would naturally whistle and answer before a very short time. [193]

Q. What did you do with the "Hercules" after you heard the "Elder" give the first passing signal to the "Kern"?

A. Why, I just kept right on going up to the barges to hitch on to them, to the light barges.

Q. State whether or not you knew that a collision had taken place.

A. Well, after I had got to my barges; yes.

Q. How did you know that?

A. I heard the crash.

Q. Now, where were you at the time that you heard the crash?

A. Just about to the barges; just about, my boat

(Testimony of Joseph O. Church.)

was just about going in between the barges at the time.

Q. And what did you do then?

A. Well, we first started to get out the lines on the barges to hitch on; then I told the boys to never mind, that there was trouble down there, to let go the anchor of the barge; and I turned around and went back down to give them any assistance that they wanted.

Q. When you reached the place of the collision, what did you find?

A. Well, I found the "Kern" sinking.

Q. And which way was she headed at that time?

A. For the Washington shore. It was right just about straight across the river, just about straight in for shore.

Q. Where were the loaded barges?

A. Well, two of them was in pretty close to shore and the other one was farther out. They were scattered; two of them was pretty handy in towards the light of the Waterford Cannery.

Q. What was the condition of the weather and atmosphere that night, Captain? [194]

A. Clear. It was a clear night.

Q. How was the wind?

A. Well, there was no wind; calm; clear.

Q. What did you do after you got down to the place of the collision?

A. Well, I first started to put a line on the "Kern" to see if I could tow her ashore.

Q. Which side did you approach her on?

(Testimony of Joseph O. Church.)

A. I was on her starboard side.

Q. And what did you succeed in doing with her?

A. Well, I didn't do anything; about the time I got the line out she went down, or started down.

Q. Where was the "Elder" at that time?

A. Oh, she was down below there a short distance. I didn't pay much attention to it. I suppose a quarter of a mile, maybe a little more below there.

Q. Did you take any of the crew off of the "Kern"? A. Two men.

Q. What men, do you know?

A. The pilot and mate.

Q. How long have you been engaged in towing rock barges, these rock barges for the Columbia Contract Company, in the river? A. Why, since '98.

Q. How long had it been customary for you to exchange loaded barges for light barges with the steamer "Kern" prior to the collision?

A. Well, with the steamer "Kern," not very long. We had ordinarily been changing them with the other tug.

Q. What was the other tug? [195]

A. The tug "Samson." The "Kern" was in the "Samson's" place, I guess about eight or ten days, something like that. I don't know exactly myself.

Q. And where did you customarily exchange barges, between what points on the river?

A. Well, wherever we would meet.

Mr. DENMAN.—You mean with the "Kern"?

Mr. CAMPBELL.—With the "Kern" and "Samson."

(Testimony of Joseph O. Church.)

A. Wherever we would happen to meet along the river.

Q. Well, between what points was the usual meeting place?

A. Oh, usually between Oak Point and Cooper's Point; usually try to make the run so as to meet in through there.

Q. Why?

A. Oh, because there is deep water and more room; lots of room; and ordinarily there is not much wind around there. It is a good place to change.

Q. When you dropped the loaded barges abreast of Waterford Light, what distance in your judgment was there between the Washington shore and the barges?

A. Well, that would be hard for me to say. I should judge about six or seven hundred feet, probably.

Q. Did you state whether you saw the searchlight of the "Kern" at any time thrown up the river that night before the collision?

A. No. I never saw the searchlight turned up the river; no, sir. That is, after she passed.

Q. Was the searchlight playing when you got down to her?

A. No; it had gone out when I got to her; her lights were all out.

Q. Before you got to her, had you seen the searchlight of the "Kern"? [196] A. No, sir.

Q. What is the usual danger signal blown on the Columbia River? A. Four short whistles.

(Testimony of Joseph O. Church.)

Cross-examination by Mr. DENMAN.

Q. Captain, you say that the "Elder" was coming down at probably full speed, as she usually went?

A. Yes, sir.

Q. That is the usual method of passing up and down that stream at that wide point, isn't it?

A. Yes, sir.

Q. And you had chosen this wide place because there was more room to get out of the way of other vessels in maneuvering and fixing up your tows?

A. Yes, sir.

Q. Because you desired, you aimed to get out of the way of other vessels as much as possible in assembling the barges? A. Yes, sir.

Q. Really lying helpless there in the stream, you can't do anything, can you, in the way of getting out of the way, in assembling the barges?

A. No; no.

Q. The combined length of your tug and your tow, would be a couple of hundred feet, wouldn't it?

A. Oh, yes; yes, more than that.

Q. More than that; so that you aim as much as possible to keep off of the fairway space when you are making those tows? A. Yes, sir.

Q. Now, this danger signal, you know what the rules provide for a danger signal, don't you?

A. Yes, sir. [197]

Q. It doesn't say it shall be four; it says not less than four? A. Not less than four; yes, sir.

Q. Now, you have not attempted to modify these rules on the Columbia River in any way, have you?

(Testimony of Joseph O. Church.)

A. No, no; I don't know that we have.

Q. If you want to call another man down, you might give him five or six, if you wanted to?

A. Yes, sir.

Q. And that would not be out of the way at all?

A. No.

Q. That is correct, isn't it?

A. Yes, that is correct.

Q. About how far is the place where the "Kern" was lying there from Cooper's Point?

A. From Cooper's Point?

Q. Yes. A. About three-quarters of a mile.

Q. That is where she was lying? A. Yes.

Q. The tide had just turned from slack water to flood, had it not, just starting to come in?

A. Yes, sir.

Q. She may have drifted quite a little ways before she sunk, may she not?

A. Well, there wasn't current enough for her to drift far; it was slack water; it hadn't got to flooding much.

Q. Well, it had got to flooding some?

A. Well, not much, if any; I don't think any.

Q. Well, now, why did you say just a moment ago you thought it was flooding some?

A. Well, it was flood tide, yes; but there was so little current [198] the position of the boat would not change very much.

Q. It would some, though? A. No.

Q. It would some?

A. Not much, because the barges never changed

(Testimony of Joseph O. Church.)

the positions in all the time they laid there very much. There is no current in the Columbia River at that place, to speak of.

Q. Oh, there is not?

A. Unless it is a big tide.

Q. So that in your opinion the place where she lay was about the point of the collision?

A. Just about, yes, sir.

Q. Now, where did you say you passed the "Elder"? A. Just below Cooper's Point.

Q. How far below, a thousand feet?

A. No. I don't think so. It might have been, but I could not say.

Q. It was within a thousand feet of Cooper's Point? A. How?

Q. It was within a thousand feet?

A. Yes, inside of a thousand feet.

Q. Of Cooper's Point? A. Yes.

Q. You are certain of that, aren't you?

A. Yes.

Q. Or pretty certain, as well as you can recollect?

A. Yes, sir.

Q. And what happened on that night after losing that tug is pretty well impressed on your mind, isn't it?

A. Well, it is two years' time; a man forgets those things a little bit, you know.

Q. It wasn't a quarter of a mile below Cooper's Point that you [199] passed the "Elder"; it was within a thousand feet of the Point?

A. Well, probably, yes, about; I think so.

(Testimony of Joseph O. Church.)

Q. And you recollect the following testimony before the United States Inspectors?

Mr. CAMPBELL.—What page?

Mr. DENMAN.—Page 85.

Q. (Continuing.) “At that time the ‘Elder’ as she was passing you, signaled the ‘Kern’? A. Yes, sir. Q. By one blast? A. Yes, sir.” Do you recollect that testimony? A. Yes.

Q. So that the first signal from the “Elder” to the “Kern” came when they were about three-quarters of a mile apart? A. Yes.

Q. That is correct, is it?

A. I think so, yes; very near it.

Q. Are you familiar with this rule, number 6 of the Inland Waters Rule, which reads as follows: “When steam vessels are running in the same direction and the vessel which is astern shall desire to pass on the right or starboard hand of the vessel ahead, she shall give one short blast of the steam whistle as a signal for such desire, and if the vessel ahead answers with one blast, she shall put her helm to port.” Are you familiar with that rule? A. Yes, sir.

Q. Now, it says here, “If the vessel ahead answers with one blast, she shall put her helm to port.” It is only in the event the vessel ahead answers with one blast that she puts her helm to port when she approaches you; that is correct, is it not?

A. Yes, sir. [200]

Q. There is no modification of that rule, or wasn’t, on the Columbia River, is there? You haven’t modified this rule in any way on the river? A. No, no.

(Testimony of Joseph O. Church.)

Q. As a matter of fact, you could not do it, could you? A. Couldn't modify it, no.

Redirect Examination by Mr. CAMPBELL.

Q. When Mr. Denman asked you if the point of collision with the "Kern" was three-quarters of a mile below the point where the "Elder" passed you, I will ask you whether or not it is your intention to give that with any degree of accuracy?

A. Well, it is only just a kind of a more or less guesswork about that distance. I don't particularly know.

Q. In your best judgment, Captain, how far were you below Cooper's Point when the "Elder" passed you and gave the first signal to the "Kern"?

A. Well, it is pretty hard for me to say; probably a thousand feet, or maybe less.

Q. Now, if the "Kern" drifted at all after the collision, which way would it be, down the river or up the river?

A. Well, I don't think she would drift. If she did, she would likely drift up the river; but I don't believe she would drift any.

Q. Which way would the river current be running?

A. I don't think there was any current, slack water; the flood tide was backing the Columbia current up.

Q. Where were the barges with respect to the position of the "Kern" at the time you got down there?

A. They were towards the Washington shore.

(Testimony of Joseph O. Church.)

Q. Above or below?

A. Well, one was a little above, and the others about abreast of them.

Recross-examination by Mr. DENMAN.

Q. Now, when the "Elder" was three-quarters of a mile—you say it was about three-quarters of a mile when you passed her, somewhere around there?

A. Less than three-quarters of a mile.

Q. Well, more than a half mile, wasn't it,—must have been if it was within a thousand feet of the point? A. Yes.

Q. More than half a mile, wasn't it?

A. Probably more than half a mile.

Q. Now, when these vessels were half a mile apart and the "Elder" asked for permission to pass the "Kern" to her starboard, why should the "Kern" call him down? Wasn't there plenty of time for him to have turned and gone on the starboard side of the "Kern"?

A. I don't know that there was. I don't know why he called him down. I wasn't on it; I was on the other boat.

Q. You can't conceive of any reason, can you?

A. No, I wasn't there. I wasn't in position to see.

Q. I am asking you now as a mariner.

A. How?

Q. I am asking you as a mariner if there was abundance of room for him to pass on his starboard side and they were half a mile apart, there was no reason for him telling him he could not come through there, was there?

(Testimony of Joseph O. Church.)

A. Well, he might have had reasons I don't know about; I don't know anything about it. [202]

Q. Now, presuming there was room to pass,—I am not asking you about this case, but presuming there was room to pass and there was plenty of clear water between the “Kern” and the shore, there was no reason, if they were half a mile apart, for the “Kern” to have called him down, was there?

A. I don't know whether there was or not.

Q. I say, presuming the facts as I am stating them; don't take any others; presuming the facts as I am stating them; they are a half mile apart?

A. Yes.

Q. There is plenty of room to pass on the star-board side; there is no reason for calling down the “Elder” at that point, was there, presuming those facts to be true, was there?

A. Well, evidently there wasn't room, because he rammed him.

The COURT.—Well, answer the hypothetical question.

The WITNESS.—Well, how can I answer it? I don't know whether there was or not. I am not pilot on steamships; and I wasn't on the “Kern.”

Q. Put this problem out of your mind now.

A. Yes.

Q. Presuming you are taking your examination before the Inspectors. A. Yes.

Q. You have taken a number, haven't you?

A. Yes, sir.

Q. All right. Now, presuming you were in that

(Testimony of Joseph O. Church.)

position, and a vessel was eight hundred feet off the Washington shore? A. Yes.

Q. And another vessel is coming down behind a half a mile away. A. Yes. [203]

Q. And asks for permission to pass in those eight hundred feet the starboard side of the other vessel, is there any reason why, if the other vessel is not moving and not crossing into that water, any reason why that vessel should forbid the approaching vessel to pass between her and the shore?

A. Well, I should think—

Q. (Interrupting.) Is there any reason, under those circumstances?

A. Well, there is reason.

Q. What is it?

A. If he kept right head-on and never cut out his green light and kept right head-on for a boat that was lying helpless, there is a reason for calling him down until he shuts out his green light.

Q. Until he shuts out his green light?

A. Yes, sir.

Q. In other words, then, if a vessel is coming straight down the river to you a half mile away?

A. Yes.

Q. A half mile away, and there is plenty of room to maneuver and pass in, you won't give him permission if he shows all his lights?

A. If I am lying helpless, no, I won't.

Q. Why?

A. Because I don't think that he—I am afraid he won't have room, that is all. I would warn him in

(Testimony of Joseph O. Church.)

time that I am helpless. When he is coming down the river, he don't know I am lying helpless.

Q. What difference does it make if you are lying helpless if he has room to pass? [204]

A. It makes considerable difference.

Q. What difference?

A. If am lying there and I am not helpless and he keeps his three lights on me all the time and I am not helpless, I can put my wheel over and get out of the way; but when I am helpless, I can't.

Q. But he is a half mile away now; he has *an* abundant time to get over there. A. Yes.

Q. And you call him down instantly? A. Yes.

Q. Have you a right to do that?

A. I certainly have if I don't think there is a chance for him to pass on.

Q. But if there is eight hundred feet, there is plenty of room to pass, isn't there?

A. Yes; if he takes the room, there is.

Q. If he takes the room; and he is a half mile away, and he says he is going to turn to the right by blowing one whistle, and you say he can't turn to the right by complying with the rule until he gets a responsive whistle—that is correct, isn't it?

A. I think you will find it under some of the rules there that a man must show his light when he blows the whistle.

Q. Is that so? What is the rule?

A. I think you will find it.

Mr. DENMAN.—Is there any such rule?

The WITNESS.—I notice that Captain Edwards

(Testimony of Joseph O. Church.)

jacked me up pretty hard about it one time.

Q. What is that?

A. I know Captain Edwards jacked me up pretty hard one day [205] because I made a statement to that effect.

Q. He did, eh? What was the statement you made?

A. About blowing the whistle when the light wasn't hid; had both lights on and blew the port whistle.

Q. Those were passing signals, weren't they?

A. Yes.

Q. They were not coming up, under this rule, from astern? A. What is the difference?

Q. The difference is the astern rule lays down the rule that you can't—I am arguing to the witness, your Honor; the point I am trying to make is the astern rule as I have read it to you, provides that you can't go from the starboard or port until you get permission, does it not? A. Yes.

Q. And that differs from the passing rule which requires you when passing, coming from opposite directions, to put your helm over as soon as you give the whistle. That is the difference between the two, isn't it? A. Yes.

Q. Now, you are half a mile apart, and ask permission to pass over to the right, and I have got to wait until I get permission from you to pass over to your right? A. Certainly.

Q. What right have you to call me down at that distance before you have given me a chance to turn over to the right by giving me the permission signal?

(Testimony of Joseph O. Church.)

A. I think we have a right to do it all right.

Q. Now, what is that based on?

A. Well, because the rule says you shall not attempt to pass until you get the answer. If the boat ahead don't see fit to let you pass, she answers with an alarm signal. [206]

Q. Oh; then your idea is that although there is plenty of room to pass, that the vessel ahead can hold the vessel astern as long as she pleases; is that it?

A. Yes, they can.

Q. That there is no correlative—

A. (Interrupting.) Until there is room to pass.

Q. Well, I am assuming there is room to pass. Now, there is eight hundred feet.

A. I don't know that there was.

Q. I am presuming that there was eight hundred feet. Now, forget for a moment what you think may have been otherwise. Presuming there was eight hundred feet, there would be room to pass, wouldn't there?

A. Yes. It appears to me there would be.

Q. What?

A. Yes; it appears to me there would be room.

Q. Now, if there is room to pass, abundant room to pass, is it your idea that the vessel ahead can hold the vessel behind until its own sweet will is satisfied; or have you got to let him pass when there is room?

A. No; I think you can hold him if you want to, because as long as he is coming right straight forward, he would be coming right straight for me, and if I was helpless and could not get out of his way,

(Testimony of Joseph O. Church.)

I would be a little bit afraid myself.

Q. That is to say, when you are a half mile apart and he can't get out of your way until you have given him permission to go by blowing your one whistle in response to his? What does it mean when I am behind you, coming down a half mile away, and blow one whistle? What do I mean by that?

A. You are asking for permission to pass. [207]

Mr. FULTON.—Which way?

A. Just merely asking for permission to pass.

Q. Which way?

A. One whistle to pass to the starboard.

Q. To the starboard of the forward vessel?

A. Yes.

Q. Now, what has the other man got to do in response to that before I can move my helm?

A. Well, if he answers with one whistle, why then you can move your helm. But you are supposed to be,—he would not likely, if you were running right straight for him, he would not be liable to answer, if he was helpless.

Q. In a half mile, can't you clear a vessel?

A. I don't know whether you can or not.

Q. That is dead ahead of you?

A. I don't know, sometimes whether they can or not. They don't seem always to do it.

Q. Now, let me ask you, suppose the vessels are in this position a half mile apart. (Counsel illustrating.) A. Yes.

Q. Do you mean to say if I get permission from her to pass that vessel ahead on the starboard side, a half

(Testimony of Joseph O. Church.)

mile away, I can't in that distance, get over and clear her? A. Why, sure, you ought to be able to.

Q. You ought to be able to do it in five hundred feet, ought you not? That is correct, isn't it?

A. Well, five hundred feet; I don't know whether you would or not.

The COURT.—You say five hundred feet is pretty close.

A. I think five hundred feet would be pretty close to the boat ahead, being helpless. [208]

Q. Suppose now, she remains stationary, she is anchored there, and I am five hundred feet behind, and I have got a vessel of the power of the "Elder," do you mean to say that if I am going straight forward, I can't clear her in five hundred feet?

A. I don't say that you can't; no.

Q. Isn't it entirely practical to do it?

A. Yes, it is.

Q. Now, if you can do it in five hundred feet, when a man asks your permission when you are a half mile back here, why shouldn't you give it to him?

A. Well, it depends altogether on the circumstances.

Q. Presuming now there is room to pass?

A. That is all there is to that.

Q. Presuming now there is room to pass?

A. I know they have let me pass many times there. I have let them pass, certainly. That is as near as I can come at it.

Redirect Examination by Mr. CAMPBELL.

Q. Captain, supposing that you had been in charge

(Testimony of Joseph O. Church.)

of the navigation of the "Kern" and after an exchange of the whistles which were exchanged, you saw that the "Elder" had not changed her course, but was still bearing down upon you with all three lights showing,—

Mr. DENMAN.—For how long?

Q. I say, until after the exchange of the four whistles, I will ask you whether or not in your judgment as a navigator there was danger of collision?

A. Why, yes, certainly, there was danger of collision.

Q. What would you do under the circumstances?

A. Well, I would blow him an alarm signal; or if there was [209] any show, I would try to get my boat out of the way; I would try to go ahead and back up or something, to get clear, if I could.

Mr. DENMAN.—Now, in order to make this clear to your Honor, we don't contend that the things that the "Kern" did, according to the testimony, when we were right up on top of her, were causitive matters in the collision at all.

Mr. CAMPBELL.—That is, you admit, Mr. Denman, that the going ahead of the "Kern" wasn't in any way the proximate cause of the collision?

Mr. DENMAN.—If your testimony be true, that you were only going after we got within forty feet of you, if you didn't move until we got right down on you, until we were in forty feet of you, if that supposition you are giving him is true, we don't contend that that is a causitive matter in the collision; it could not be. We were right on top of one another and

(Testimony of Joseph O. Church.)

what a man would do under those circumstances doesn't count.

Mr. CAMPBELL.—I am glad to get that admission in the record. That is all.

Recross-examination by Mr. DENMAN.

Q. You say that after the whistles had been exchanged; by that, you mean after the four-whistle signal had been given? A. Yes.

Q. You say you think there would be danger of collision? A. Yes.

Q. You don't think there is any danger of collision when they are a half a mile away and the "Elder" had just blown one whistle, do you? There was no danger of collision then?

A. Well, it seemed to have been. [210]

Q. I am not asking you that. If you were on the stern of the "Kern" and looking up the river and saw a vessel half a mile off that blew one whistle to you,— A. Yes.

Q. You would not think there was any danger of collision then, would you?

A. Well, I should—

Q. (Interrupting.) Oh, be frank.

A. It don't look like there ought to be; no.

Mr. DENMAN.—No; that is all.

Redirect Examination by Mr. CAMPBELL.

Q. If the "Elder" was coming right straight down behind the "Kern" and had not changed her course to either port or starboard at all until she got within a distance of five hundred feet, in your judgment, could the "Elder" have shifted her course so as to

(Testimony of Joseph O. Church.)

have made certain that a collision would not have taken place with the stern of the "Kern" and any of the port side of the "Elder" from forward aft?

Mr. DENMAN.—I object to that. There is no testimony at all—

Mr. CAMPBELL.—(Interrupting.) No, but it is a hypothetical question just as you have been asking.

Mr. DENMAN.—But it is not a hypothetical question based upon any fact proven in the case.

The COURT.—I will let him answer.

Q. In your judgment, could she when she got in a distance of five hundred feet, shift her course either to the starboard or port so as to have made certain a collision would not have taken place between the stern of the "Kern" and some point on the starboard or port side of the "Elder" from forward aft?
[211]

A. Well, it looks like she ought to have been able to turn clear one way or the other.

Q. In a distance of five hundred feet?

A. Five hundred feet, it looks like she ought to.

Recross-examination by Mr. DENMAN.

Q. Suppose you were on the "Elder" five hundred feet astern of the "Kern" and going to split her if she come straight ahead, could you have maneuvered her so you could not have hit her?

A. I don't know whether I could or not.

Q. Why? A. I never handled a steamship.

Q. Never handled a steamship? A. No.

Q. What do you think about it now?

(Testimony of Joseph O. Church.)

A. I never handled a steamship; I could not answer your question.

The COURT.—He is not an expert on that matter.

The WITNESS.—I am no expert steamship man.

Witness excused.

The COURT.—The court will take a recess now until two o'clock.

(Recess was thereupon taken until two o'clock P. M. of Tuesday, *Feb. 6*, 1912.) [212]

Testimony of George Hale, for Libelant.

Portland, Oregon, Tuesday, *February 5*, 1912,
2 P. M.

GEORGE HALE, a witness called on behalf of the libelant, being first duly sworn, testified as follows:

Direct Examination.

Questions by Mr. CAMPBELL:

Mr. Hale, how old are you? A. Thirty-six.

Q. Were you the mate on board the steamer "Hercules" on the night that the "Elder" ran into the "Kern"? A. Yes, sir.

Q. Where was the "Kern"? Where had you passed the "Kern" as you were proceeding down the river with the loaded barges?

A. I don't know just where she was. I had just got up then.

Q. You were not on deck then?

A. No; I had just got up.

Q. What time did you go on deck; rather, where was the "Hercules" when you got on deck?

A. The "Hercules" right—just over near to

(Testimony of George Hale.)

Waterford, Waterford Light.

Q. Above it or below it? A. Above it.

Q. Did you have anything in tow at that time?

A. Three barges.

Q. Which three barges? A. Loaded barges.

Q. Where was the "Kern" at the time that you let go the three loaded barges?

A. She had swung around and started back. We always hold them until she turns around.

Q. And where were the three light barges when you got back to them after dropping the loaded barges? [213]

A. Just by Cooper's Point Light.

Q. Abreast the Cooper's Point Light?

A. Just about there; I could not tell; didn't pay much attention whether above. Wasn't below.

Q. Did you see the "Elder" that night?

A. Yes, sir.

Q. Were any signals exchanged between you and the "Elder"?

A. If I remember rightly she whistled once to pass the "Hercules."

Q. Was any response made by the "Hercules"?

A. Yes, sir.

Q. Whereabouts was the "Hercules" when the "Elder" passed her?

A. Just a little below Cooper's Point Light.

Q. Did you hear any signals given by the "Elder" to the "Daniel Kern"?

A. Heard one whistle.

Q. Did you hear any response? A. Yes, sir.

(Testimony of George Hale.)

Q. By the "Kern"?

A. Heard a danger signal.

Q. How many whistles?

A. Four short whistles.

Q. How soon after the "Elder's" first whistle were the danger whistles given?

A. Well, I couldn't say exactly the time; it was immediately.

Q. How did the lapse of time compare with the usual lapse of time between passing signals?

A. Well, sometimes we don't get a response as fast—as quick as you would at other times, but it was just immediately after that.

Q. Did you hear any other signals given by either the "Elder" or the "Kern"?

A. I heard the "Kern" blow her danger whistle twice. The "Elder" only blew once to my knowledge. I didn't pay no attention. [214]

Q. What were you doing at the time the "Elder" gave her first one whistle?

A. Just went in to our tow—to make up our tow; had our lines out, gotten out our lines.

Q. Had you reached the barges at that time?

A. Sir?

Q. Had you reached the barges at that time?

A. When? When she whistled?

Q. When she whistled to the "Kern"?

A. Just coming into them.

Q. What did you do after that?

A. Well, Captain Church hollered to me to shove

(Testimony of George Hale.)

them out to shoal water and drop the anchor, so I ran forward with the anchor.

Q. Before that, what, if anything, were you doing with your barges between the time you heard the "Elder" give her first whistle and the time of the collision?

A. Well, making fast to them.

Q. Did you succeed in making fast?

A. No, got all my lines out—six lines—didn't have them cinched up.

Q. How did those six lines run?

A. Two headlines by the bow, two tow lines from the forward kevel leading aft and two stern lines.

Q. One line to each barge?

A. No lines on the middle barge. They crossed in there.

Q. Where were the forward kevels with respect to the stem of the "Hercules"?

A. Well, about twelve foot aft the stem, I suppose—fourteen foot. [215]

Q. How soon after you heard the second series of four whistles given by the "Kern" was it when Captain Church told you there had been a collision?

A. That is when it was. Just as soon as he blew the four whistles, he hollered to me, he says, "The steamer is into the 'Kern' down there." He says, "We will get the anchor ready; we will drop the anchor."

Q. What did you do then?

A. I went forward on the barges and told the boys, the crew, to take in the lines—take them in. I

(Testimony of George Hale.)

went forward to get the anchor ready.

Q. What did the "Hercules" do after that?

A. Anchored the barges and went right back there; took Mr. Moran off the "Kern."

Q. How did you find the "Kern" then?

A. She was crossways of the channel.

Q. Heading which way?

A. Heading to the Washington shore; the bow was to the Washington shore.

Q. Where was the "Elder"?

A. The "Elder," she was below.

Q. What did you do after you got down with the "Hercules"?

A. I threw a line to Mr. Moran to put the tow-line on. It was a wire line. I saw she was beginning to settle and I said never mind, and I picked him up. Mr. Anderson jumped overboard. I threw a line to him and got him.

Q. Where did Mr. Moran come aboard your vessel?

A. Right on the starboard bow.

Q. How long have you been working on any of the tugs towing these rock barges? [216]

A. Well, I have worked on them, on the big barges or schooners, I worked on them in 1906, and I have worked all summer long on the "Hercules"—on them.

Q. Where did you—where was the usual place of meeting and exchanging the loaded barges and the light barges?

A. Any place we met except in a narrow place.

(Testimony of George Hale.)

Q. Yes, but between what points on the river did you usually meet?

A. Oh, well, generally anywheres from Oak Point down.

Q. Down to what?

A. Well, down anywheres to Waterford—in there; sometimes we would be way below. Sometimes we wouldn't be up and sometimes we would.

Q. How far below Waterford?

A. Have we been?

Q. Yes.

A. Down to Tenasillihee Island. I have been down that far.

Q. How far is that—how far below Waterford is that?

A. Must be about ten or fifteen miles, I guess.

Q. How did the width of the channel at the place where you dropped the loaded barges this night compare with the average width of the channel between the points where you usually exchanged?

A. Well, of course, it is a pretty wide channel from Waterford clear up there for us—clear up to Oak Point, for that matter—well, to Quinn's anyway, might be a little bit wider above; I don't know what part is the ship's channel itself. [217]

Cross-examination.

Questions by Mr. DENMAN:

Mr. Hale, what did you say your business was?

A. Mate on the "Hercules" then.

Q. And the Captain was whom? A. Sir?

(Testimony of George Hale.)

Q. Who was your Captain—Captain Church?

A. Captain Church.

Q. Captain Church tells us that the “Elder” passed the “Hercules” about a thousand feet from Cooper’s Point. Is that your memory of it?

A. Below Cooper’s Point?

Q. Yes.

A. Well, I couldn’t say according to feet, for I didn’t pay much attention. I was busy then. He has more chance to see than I.

Q. You don’t recollect anything to contradict that?

A. Oh, no.

Q. And these barges were lying—the loaded barges were lying just off Waterford Light?

A. Just above Waterford Light there.

Q. Now, how—you say you passed her there, then you went over to these light barges?

A. Yes, sir.

Q. In shallow water?

A. Well, they was in good water.

Q. What did you mean by shoal water?

A. Well, we shifted her over to shoal water to anchor—get them out of the road when we anchored.

Q. You wanted to get the light barges out of the way?

A. Get them away from there, you know.

Q. Why? [218]

A. To get them out of the channel for things to go up or down—give them more room.

Q. Done to effect the manipulations required to get

(Testimony of George Hale.)

these barges into shape and attach your lines and all that sort of thing?

A. Sometimes it is and sometimes it ain't.

Q. This time you had six lines out, did you?

A. Yes, sir.

Q. How long does it take you to get them out—I mean about?

A. Took us, oh, about—I have been under way in three minutes.

Q. I am not asking what you have been. What did you do that night?

A. I couldn't say that time at all. That is something I can't.

Q. As much as ten minutes?

A. No, I don't think I ever took ten minutes unless the barges were turned around. They were straight in the channel that night.

Q. You anchored, didn't you?

A. Anchored them afterwards; certainly, after they had the collision.

Q. Oh, I see.

A. Don't drop any anchor to land.

Q. Well, as I understand it, though, you wanted to get out of the fairway in making up these barges so as to be in no danger to passing—

A. No, I went to make up our tows.

Q. I see. Then if Captain Moran testified he took his light barges over on the Oregon side of channel to get of the way, he is mistaken?

A. No, I wouldn't say that. We go to pick up our barges. Naturally we are going to leave them out

(Testimony of George Hale.)

of the channel as much [219] as we can—the light barges; if we go over to pick them up, why we keep right on going.

Q. When you say going over, you mean over from the regular traveled route? A. Yes.

Q. Where was it you heard the crash of these two vessels? A. I didn't hear the crash.

Q. Was it a quiet night?

A. Yes, sir, clear night.

Q. Now, your captain testified that the first signal from the "Elder" to the "Kern" was given just as you passed her. You have nothing to contradict that, have you?

A. The signal I heard, the only one I heard was when I—I waited until she got by before I turned on the arc light. We use an arc light for a steamer coming down to us—use our colored lights; just as she got abreast, her bridge abreast of me, I reached up and turned on the arc light.

Q. And about that time this whistle was blown to the "Kern"? A. Yes, sir.

Q. Now, you say you exchange your barges anywhere but in a narrow place on the river?

A. Yes, sir.

Q. Why not in a narrow place?

A. Isn't room in case a steamer comes down.

Q. You want to keep out of the way, then, of the regular line of travel?

A. Certainly; figure on giving to them the channel.

Q. So that your story is that just below Cooper's Point the first whistle came from the "Elder" to

(Testimony of George Hale.)

the "Kern" and that was just as you turned off to go over to these light barges? [220]

A. Well, was headed right up to them; backed right around, turned around and headed upstream.

Q. Right by the point there? A. Yes, sir.

Witness excused. [221]

Testimony of Hans Jensen, for Libelant.

HANS JENSEN, a witness called on behalf of libelant, being first duly sworn, testified as follows:

Direct Examination.

Questions by Mr. CAMPBELL:

How old are you, Mr. Jensen? A. Thirty-two.

Q. Where do you live? A. Silverton, Oregon.

Q. Silverton, Oregon? A. Yes, sir.

Q. What is your business?

A. Marine engineer.

Q. How long have you held a license as a marine engineer? A. Since March, 1909.

Q. Were you employed on board the steamer "Daniel Kern" at the time she was sunk by the "Elder"? A. Yes, sir.

Q. In what capacity? A. Assistant engineer.

Q. Who was on watch at the time of the collision?

A. I was.

Q. Where were you standing at the time—where were you at the time? A. Of the collision?

Q. Yes. A. At the throttle.

Q. How long had you been on watch prior to the collision? A. Well, about half an hour.

Q. Who did you succeed on watch?

(Testimony of Hans Jensen.)

A. The chief.

Q. What is his name? A. Spaulding.

Q. And did you receive any bells or signals from the bridge of the "Kern" directing you to manipulate the engines? [222] A. Yes, sir.

Q. Prior to the collision? A. Yes, sir.

Q. For some few minutes before you received your first signal what had you been doing with the engines?

A. Well, they had been both going ahead and backing.

Q. What was the steamer doing when you were working ahead and back?

A. Going up to the barges, I think.

Q. When you reached the barges then what did you do with your engine? A. Stopped.

Q. Did you hear any exchange of whistles between the "Daniel Kern" and any other vessel?

A. Yes, sir.

Q. What whistle did you hear?

A. I heard one whistle. It sounded to me as if it was astern of us; then four short blasts from the whistle on our boat and then in a short time one more from a boat outside somewhere; then four more short whistles from our whistle.

Q. What interval of time elapsed between the whistle from the boat outside and your four whistles in both instances?

A. A very short time. I don't remember as to— couldn't say just exactly, because I wasn't paying attention to it. Didn't have a watch with me, but

(Testimony of Hans Jensen.)

it was only a very short time.

Q. How soon—where is your engine-room with respect to the outside of the vessel? Can you show me by referring to this photograph (Libelant's Exhibit 1)?

A. This window here is abreast the engine-room.

Q. Which window counting from the forward part of the cabin? A. The third. [223]

Q. And from the after-end of the boat which is it?

A. The fourth; that is the fiddley there.

Q. What do you mean by the fiddley?

A. It is over the boiler-room; the bulkhead between the boiler-room and the engine-room. And this engine-room opening is, I think, about between the two here.

Q. Between the third and fourth windows counting from the forward end of the cabin and between the—

A. Third and fourth counting from the aft also.

Q. Counting from aft.

Mr. DENMAN.—Pardon me, Mr. Campbell; have you a longitudinal diagram of the “Kern”?

Mr. CAMPBELL.—All that I have is simply the photographs.

Q. At the time or after you heard the exchange of signals between the two steamers, did you receive any signals from the bridge of the “Kern” to the engine-room? A. Yes, sir.

Q. What were they? A. Full speed ahead.

Q. And how long was that after the second series of four whistles were given by the “Kern”?

(Testimony of Hans Jensen.)

A. Well, I don't think it was over five or ten seconds.

Q. What did you do with your engines?

A. Put full speed ahead.

Q. And how long after you put full speed ahead until the collision itself?

A. I don't think it was over fifteen seconds—somewhere between fifteen and thirty. I didn't have a watch and didn't notice it, but as near as I could judge. [224]

Q. Did you make any effort to record it in your engine-room.

A. No, not in case—I didn't then, no, sir.

Q. How many turns, in your judgment, had your engine made between the time you started ahead until the collision came? A. Well, between 50 and 60.

Mr. DENMAN.—Between what?

A. Between 50 and 60 revolutions, I think.

Q. My question was, how many revolutions had your engine itself made from the time you started full speed ahead until the blow from the collision came?

A. From the time I started ahead, you mean?

Q. Yes.

A. Yes, I think it made between 50 and 60 revolutions.

Q. How many?

A. Between 50 and 60 revolutions.

Q. How many revolutions could your engine make a minute?

(Testimony of Hans Jensen.)

A. Seventy—between 70 and 75, I think it would make.

Q. How long did you say your engine was running before the collision?

Mr. DENMAN.—He said fifteen seconds.

A. Well, between—about half a minute—something like that. You see the engine, when you throw on full speed ahead suddenly, why, it revolves faster than it does after it picks up the load.

Q. I see. Well, how did you throw your steam on after you got the signal full speed ahead?

A. Threw full steam on at once.

Q. What kind of a bell did you get directing you to do that?

A. You mean the number—a gong and a jingle.

Q. What did the gong itself mean?

A. Half speed.

Q. And the jingle? A. Full speed.

Q. And how did they come with respect to each other? [225] A. Right together.

Q. How was the steam of your boiler with respect to the usual head of steam that you carried?

A. All we were allowed.

Q. Will you state whether or not your vessel will travel the same distance under 60 revolutions from a stop as it will under 60 revolutions when you are running along?

Mr. DENMAN.—The engine or the vessel?

Q. The vessel. That is to say, if your vessel is stopped and you start your engine full speed ahead and she makes 60 turns, will your vessel travel the

(Testimony of Hans Jensen.)

same distance as she would if the vessel was running and you measured the distance she would make in 60 turns? A. Oh, no, sir.

Q. How many turns of the engine, in your judgment, does it take to get headway on your vessel under the head of steam and the giving of full steam as you did in this case?

A. Well, it would take about—to give it, you mean, full speed?

Q. As you gave the steam?

A. Giving the full speed, well, two minutes, I think—to give it full speed.

Q. I thought you said full steam? I mean not full speed but in order to get headway at all how many revolutions of your engine?

A. Twenty-five revolutions ought to. I have never timed, but I think 25 revolutions ought to give it some way.

Q. Where was the chief engineer's room located with respect to the engine-room? A. Aft.

Q. What means of communication, if any, was there between the engine-room and his room?

A. None, except out on deck. You could go out on deck and [226] into the room.

Q. What did you do after the collision?

A. After the collision the engine began to race and I closed the throttle, because I knew the engine was useless then, and just then the mate came by and hollered, "All hands get on the barge." So I shouted to the oiler and the firemen, who were below, to come on deck and then I went around the fiddley and

(Testimony of Hans Jensen.)

closed the main stop, closed the steam for the main engine—closed the only main engine—I closed that.

Q. You shut the water off from the main engine?

A. Yes, I closed the steam next to the boiler or engine and jumped on the barge.

Q. Which barge did you jump on?

A. I don't know which barge it was.

Q. Where was the barge at the time?

A. The barge was alongside the boat on the port side.

Q. Now, what, if you know, was the cause of the engine racing?

A. I think, as near as I could tell, the shaft—I don't know positive, but I think the shaft was broken or the propeller gone. The only thing—

Q. Did you see it afterwards? A. No, sir.

Cross-examination.

Questions by Mr. DENMAN:

As I understand it, you say up to 25 revolutions you wouldn't get way on or it would take that time to get hold, and from there on her way would develop?

A. Well, it would take 25 to get some way on her.

Q. You wouldn't have full way on then?

A. No. [227]

Q. Your tug was lashed to the barge at that time, wasn't it? A. I don't know.

Q. Where is the—how far is the deck of the "Kern" above the water-line?

A. I don't know that.

Q. Well, is it two feet—three feet?

(Testimony of Hans Jensen.)

A. I think about two feet.

Q. And the engine is below down in the hold, is it not?

A. Yes, sir, but the starting-platform is on a level with the main deck.

Q. What?

A. The starting-platform, where I was standing.

Q. On the main deck? A. Yes, sir.

Q. And you say—where were you in that room, that starting-platform? How large a room is that?

A. About 10x12, I think.

Q. 10x12. What portion of the room were you in?

A. Forward.

Q. Forward, and where was this window that was open?

A. Windows? You mean these windows here?

Q. The window opened from this room outside—wasn't there?

A. Yes, sir, a door opened also, but a gangway—this engine-room—there is a gangway about three feet wide and the engine-room is the inner side of this gangway. These windows are on the outside.

Q. Is the engine-room sealed up where you were, where the starting-platform is? A. Yes, sir.

Q. How did that sound get in there from the outside? A. The door was open. [228]

Q. Where was that door—behind you or alongside you? A. Right by me.

Q. Behind you. Then, any sound that came in from the outside would have to come in through the door behind you?

(Testimony of Hans Jensen.)

A. The windows—two windows also.

Q. Where were they? A. Aft further.

Q. Still further aft? A. Yes.

Q. So the sound that came in would still have to go through those windows and that door which was behind you? That is correct? A. Yes, sir.

Q. Any sound coming from forward would have to come back around and come back up to you through that opening? A whistle outside from a vessel forward of you would have to come around through that opening and up again?

A. I was right by the door.

Q. I thought you said on the starting-platform?

A. Yes, it is right by the door.

Q. I thought you said a gangway in between?

A. Yes, this gangway is open, however, fore and aft.

Q. But you say you were standing in the forward part of the room? A. Yes, sir.

Q. And that the door and windows were back of you in the room toward the stern? A. Yes.

Q. And the sound that came in had to come through the door and these windows, did it not?

A. Yes, sir.

Q. Then the sound necessarily had to come from behind you that [229] came through the doors and windows?

A. Yes, on the side. When you face the throttle you stand facing the—

Q. Yes, but you say you were forward of the door. That is correct?

(Testimony of Hans Jensen.)

A. No, I say at the opening of the door, the door was forward of me. I was in the forward end of the room and the door was forward of me.

Q. You say you were forward of the door—the door was behind you. Whereabouts are the engines on this (Libelant's Exhibit 1)? A. Right here.

Q. That is right where? A. Right in here.

Q. Now, what is the door that you refer to?

A. The door that I have reference to is inside here. There is a gangway here that runs the full length of the ship. It is open at this end and open at that end.

Q. Now, draw—where is this? This is a floor plan that we are looking down on? A. Yes.

Q. Now, you say the engine is about there?

A. Yes.

Q. That is to say in this picture about underneath the bow of this boat?

A. Well, about midships. I could tell if I see the skylight. I can't see the skylight there, so I don't know just exactly.

Q. Now, just mark your engine-room here. As I understand it, this was sheathed on the outside up?

A. Yes, sir. [230]

Q. Then, inside there was another wall?

A. There is the engine-room (drawing on paper).

Q. Now, where were the windows in this outside wall with reference to you? A. One right here.

Q. That is to say, at the point marked "A"?

A. And one about here as near as I can remember.

Q. The point marked "B." A. Yes, sir.

(Testimony of Hans Jensen.)

Q. Now, you were in this inside room which I will mark "X, Y, T, Z." Now, where were the windows and doors in that?

A. Here was the door, here was another window, here was another window. All were open.

Q. Now, where were you standing with reference—you say you were standing forward of the door—the door was aft of you?

A. In the forward part of the room. The door was clear up to this bulkhead here, so I couldn't be forward of it.

Q. So that the sound to come in there would have to pass first through the orifices or openings "A" and "B" on the outside, then through these three openings to the inside?

A. Yes, sir, or through this opening here. This was open aft all the way right out.

Q. You mean to say there was nothing here at all? Wasn't there a bulkhead between that?

A. Yes, here, but not in the gangway.

Q. So it could go in through there in the gangway and around here—so the sound would either have to go up through the gangway here or through there, or through there, or through these openings here?

A. Yes, sir. [231]

Q. And you were inside at the place called "M"?

A. Right here is where I stood. The throttle is right here, the engine is right in here.

Q. Now, from that position could you tell whether or not the whistle that you heard came from the port side on your stern, or from the starboard side on

(Testimony of Hans Jensen.)

your stern? A. No, sir, I couldn't tell.

Q. Might have come from the starboard side and might have come from the port side?

COURT.—Are you going to offer that drawing?

Mr. DENMAN.—Yes, I will offer it.

(Marked Claimant's Exhibit "A.")

Q. Now, I understand that you, just before you got this—you said that just before you got this signal to go ahead full speed you had been backing and filling, had you not?

A. Some time prior to that, yes, sir.

Q. Just before? A. Not immediately.

Q. How long?

A. Well, I don't remember, perhaps three or four minutes.

Q. Had been dead three or four minutes, had you?

A. Yes, sir.

Q. Now, your memory regarding this, of course, was fresher at the time you went before the Inspectors than it is now? A. Yes, sir.

Q. Do you remember stating before the Inspectors: This was the question put to you—page 98—"Well, when was it that the signal to go ahead full speed was given? A. Immediately after the last four of the blasts. Q. Immediately after the last four of the blasts? A. Yes, sir. Q. And then didn't [232] you say that she had been going ahead for thirty seconds? A. About fifteen, sir. Q. Didn't you say at first thirty? A. Well, I think anywhere between fifteen and thirty seconds." You remember that testimony, don't you? A. Yes, sir.

(Testimony of Hans Jensen.)

Q. So your first impression then was fifteen seconds you had been going ahead. That is a quarter of a minute, isn't it? A. Yes, sir.

Mr. CAMPBELL.—He said between fifteen and thirty seconds.

A. Between fifteen and thirty as near as I remember. I didn't have a watch, so couldn't tell.

Q. But that was your impression at that time?

A. My impression was between fifteen and thirty seconds.

Q. Could they have made any way in the water at that time? A. Yes, sir.

Q. How much?

A. The number of feet, you mean?

Q. Yes.

A. That the ship would go forward? Oh, about perhaps twenty feet.

Redirect Examination.

Q. Have you ever experimented with the "Kern" to see just how far she would move forward under these conditions? A. No, sir.

Q. Now, what was there in the roof of the cabin—anything over the engine-room? A. Skylight.

Q. What was the condition of that that evening?

A. That was open.

Q. How wide was this gangway or space between the engine-room wall and the side of the vessel?
[233]

Mr. DENMAN.—He says three feet.

A. I am not sure, but I think between three or four feet, something like that—I have never measured it.

(Testimony of Hans Jensen.)

Q. Was there anything across it to close the after end of the gangway leading past the engine-room?

A. No, sir.

Q. Will you take this pencil and mark upon the photograph here with the figure "E" the point opposite which you think you were standing? (Witness does so.) Between which windows was it? (Witness indicates.)

Q. Were you correct on your direct examination, then, in saying that it was between the third and fourth windows looking aft and the fourth and third counting from forward?

A. No, that is right. That is a mistake—that is a mistake—here is the fiddley, so this must be—there is the stack there coming up. This must be the fiddley—there is the window opposite the fiddley; this must be the engine-room because here is the bulkhead between the engine-room and the fiddley.

Q. The second opening counting from forward aft is opposite the fiddley? A. Yes.

Q. Now, upon the drawing which has been offered in evidence as Claimant's Exhibit "A" I note you have only shown two openings marked "A" and "B." I want to know whether you desire to testify there were only two openings on that side of the vessel—so as to make this record clear. On this drawing which is marked Claimant's Exhibit "A" are shown two openings on the side of the vessel marked "A" and "B." I want to know now whether you want to testify that there were only two openings there of what you desire to testify? [234]

(Testimony of Hans Jensen.)

A. No, there were more.

Q. How did the number of openings, as your recollection goes, compare with the number of openings shown on the photograph "Libelant's Exhibit 1"?

A. The same as marked on the photograph.

Q. What was there forward of the engine-room in the ship? What was forward of the engine-room of the vessel? A. The fiddley, the boiler-room.

Q. What part of the vessel's equipment?

A. You mean the machinery?

Q. Where was the boiler with respect to the engine? A. Forward of the engine.

Recross-examination.

Q. What does she burn? A. Oil.

Q. What kind of burners did she have?

A. S. and P.

Q. Usual type? A. Yes, sir.

Q. You were keeping up full steam at that time?

A. No, sir.

Q. You didn't have full steam on?

A. Oh, we had full steam on, but the burners not going full speed because we were laying still.

Q. Do you cut the burners down when you are laying still only few minutes? A. Certainly.

Q. How were they going—about half?

A. I think so.

Q. There is quite a little noise with half burning, isn't there? A. Not very much. [235]

Q. There is noise? A. Somewhat, yes, sir.

Q. You can hear that clear back to the stern, can't you?

(Testimony of Hans Jensen.)

A. No, sir, not when half speed you couldn't, I don't think.

Q. You can hear them in the engine-room, can't you? A. Yes, a little.

Q. Now, this long passageway that goes from the stern three feet wide, how far was that—how long was that passage back to the stern?

A. About twenty feet, I think.

Q. How long is the vessel over all?

A. I don't know, sir.

Q. Well, take another look. How far is it from "E" to the end of that passageway?

A. You mean feet?

Q. Nearly thirty, isn't it?

A. Well, I wouldn't say. I don't know how long the ship is.

Q. Doesn't it look more than twenty feet to you?

A. No.

Witness excused. [236]

Testimony of Charles W. Spaulding, for Libelant.

CHARLES W. SPAULDING, a witness called on behalf of the libelant, being first duly sworn, testified as follows:

Direct Examination.

Questions by Mr. CAMPBELL:

How old are you, Mr. Spaulding? A. Fifty-two.

Q. What is your business?

A. Chief engineer—marine engineer.

Q. Where do you live?

A. 683 Vancouver Avenue, Portland.

Q. Where are you presently employed?

(Testimony of Charles W. Spaulding.)

A. Mr. Kern—Columbia Contract Company.

Q. Have you been in his employ—were you in his employ at the time of the “Elder”—“Kern” collision?

A. Yes, sir.

Q. What vessel were you on?

A. “Daniel Kern”—steamer “Daniel Kern.”

Q. In what capacity?

A. Chief engineer.

Q. Do you remember the collision between the “Kern” and the “Elder”? A. Yes, sir.

Q. Where were you? What was the first intimation that you had that the two vessels were in the vicinity of each other?

A. I was in my room when the first four whistles were blown. I knew that was the danger whistle, of course, but I didn’t get up.

Q. Which vessel blew the first four whistles?

A. I didn’t hear anything but the “Kern’s” whistle. I heard our four whistles.

Q. And how many whistles did you hear from the “Kern”? [237]

A. Two different times—four whistles.

Q. When had you gone off watch?

A. Quarter after twelve left the engine-room.

Q. And where did you go?

A. Went to my room and washed, as usual, and went to bed, but I didn’t go to—

Q. Where was your room located with respect to the engine-room?

A. Right after the engine-room.

Q. On which deck? A. Sir?

(Testimony of Charles W. Spaulding.)

Q. On which deck?

A. Between the hurricane deck and the main deck, right aft the engine-room.

Q. When you heard the first four whistles of the "Elder" what were you doing?

A. I was lying down wide awake in bed. In fact, I had just got into bed.

Q. What had you done between the time that you left the engine-room at 12:15 and the time you heard the first four whistles?

A. From 12:15 to twelve—I usually stick around a little while in the engine-room when I go off watch.

Q. In between 12:15 and the time you heard the first whistles, this particular night what had you done after you left the engine-room at 12:15?

A. Just simply washed and went to bed as usual.

Q. What did you do when you heard the four whistles from the "Kern"?

A. I started to get up, and I said, "Oh, shoot it! I ain't going to go out," and lay down again. Right directly after four more whistles, and then I raised up and sort of sat on the side of the bed; then, if I remember right, there was a succession [238] of whistles and then the crash. Then I got up.

Q. How long after the second four whistles before the crash came?

A. Well, it was right close to it. I couldn't tell how long. It was close—everything was close.

Q. Could you tell anything of the direction—you didn't hear the whistles from the "Elder"?

(Testimony of Charles W. Spaulding.)

A. No, sir, I didn't hear the whistles from the "Elder."

Q. What did you do after you got up?

A. What did I do first?

Q. Yes.

A. The first thing I done was to slide my window open. You see that is the only way I could get in communication with the engine-room. I couldn't go into the dining-room and go around to get in, so I opened my window and stuck my head out and hollered for my assistant to throw the circulator into the bilge—throw the two feed-pumps on the bilge and put on all the pumps. I did this through the window.

Q. The window you hollered through was the window on the side of the cabin?

A. Yes, otherwise I would have to go through the dining-room and through two doors.

Q. When was that in respect to the time of the collision?

A. That was right after the crash I made that effort. Then somebody was pulling bells; I don't know who it was. The mate told me he was the one ringing the bells, but they was ringing the bells, so I ran around, then, to the engine-room to answer those bells. There was no answering going on and I ran without being dressed, to put on my steam, but the assistant had closed the main speed, but the "Elder" had gone through and broke my propelling—broke the shaft, you know. [239]

Q. What do you mean by saying had gone through

(Testimony of Charles W. Spaulding.)

and broke the shaft—what shaft?

A. The main shaft. The “Elder” went through and broke it.

Q. Where does the main shaft lead to?

A. Leads to the propeller.

Q. From what?

A. From the engine. So that put the engine out of commission entirely, so I telephoned back to the pilot-house and says, “She refuses to work. Get busy on something else.” I was talking to the captain, Anderson, I believe—the mate. Then I got busy then saving—doing all I could.

Q. And how soon after the collision did you leave here—when did you leave her?

A. I think I was the last man off here—I think I was. I may not, but I think I was the last man. It is a stand between me and Anderson who left the boat last.

Q. What boat did you go on?

A. In a small boat. The water was up about to my shoe tops and I stepped into a small boat.

Q. What part of the “Kern” did you get off?

A. Midships—not midships, forward, next to the hatches.

Q. Where was that with respect to the gangway forward? A. Forward of the pilot-house.

Q. Did you keep any record of the time that elapsed between the various incidents you have related?

A. No, sir, I didn’t keep no record.

Q. Where was the “Elder” when you saw her?

A. When I saw the “Elder”—when I opened my

(Testimony of Charles W. Spaulding.)

door to leave my room there was the "Elder's" bow right in front of me—looked awful close. It wasn't far from me. [240]

Q. Where was the bow at that time with respect to the "Kern" itself?

A. Right in against—clear up the shaft.

Q. And what part of the vessel does the shaft run through?

A. What part of the vessel—right center. Right from the engine—from the propeller to the wheel.

Cross-examination.

Questions by Mr. DENMAN:

Chief, do you recollect testifying the space of time between the first whistle and the collision might have been as much as two minutes or thereabouts?

A. Oh, no, all close together, very close together. In fact, didn't have much time to do anything, it was so close.

Q. Do you remember being asked before the Commission how long the time was—the Inspectors?

A. Well, one or two minutes, something like that, from the first four whistles to the second four whistles. I should judge maybe it would be two minutes or a minute. Something like that, I don't know for sure. I know it was all close.

Q. It wasn't four whistles, then four whistles immediately. About a minute's time or two minutes in between? A. Sir?

Q. Wasn't four whistles and then four more whistles immediately, but there might have been two

(Testimony of Charles W. Spaulding.)

minutes or a minute's time in between?

A. Might have been a minute, something like that, all close work.

Q. Might have been two minutes you testified before?

A. Might have been two minutes. I can't tell for sure. It was close work.

Witness excused. [241]

Testimony of Arne Arneson, for Libelant.

ARNE ARNESON, a witness called on behalf of the libelant, being first duly sworn, testified as follows:

Direct Examination.

Questions by Mr. CAMPBELL:

How old are you, Mr. Arneson?

A. I was 23 last August, the 25th of August.

Q. And what is your business?

A. I used to be a sailor.

Q. Used to be a sailor? A. Yes.

Q. Are you now? A. Yes.

Q. What do you sail on now?

A. On the river—used to be outside.

Q. What boats have you been sailing on recently?

A. I was on the "Meldrum."

Q. On the what?

A. On the "Meldrum" of Astoria.

Q. Who owns it?

A. The Callendar Navigation Company.

Q. Were you on board the steamer "Kern" at the time she was sunk by the "Elder"? A. Yes, sir.

(Testimony of Arne Arneson.)

Q. What were you doing aboard of her—what was your capacity? A. I was a deckhand.

Q. Deckhand. What time did you get up that night? A. Oh, about 12:15.

Q. 12:15, and where was the “Kern” at that time—what was she doing?

A. She was just going up to change tows—change barges.

Q. Which barges did she have in tow when you got up? A. She had the empty ones in tow. [242]

Q. What did she do with the empty barges?

A. Let them go.

Q. And what did you do after you let them go?

A. Was going to turn around and hook onto the loaded ones.

Q. And did you ever reach the loaded ones?

A. What?

Q. Did you ever reach the loaded ones?

A. Which?

Q. Did you get down to the loaded ones?

A. Yes, sir, we got one line aboard.

Q. Now, just describe to us how the “Kern”—before I ask that—which way were the loaded barges headed with respect to the Oregon shore and the Washington shore?

A. Was headed toward the Oregon shore.

Q. Just describe to us how the “Kern” came up to the loaded barges.

A. Well, we was heading downstream and we had the barges kind of on the port bow, the stern barges.

Q. And how were you—what lines were you mak-

(Testimony of Arne Arneson.)

ing fast, if any? A. Port head-line.

Q. And it led from where on the "Kern"?

A. From the port bow.

Q. And where did it lead on the barge?

A. On the stern of the barge.

Q. Which barge? A. Port barge.

Q. Did you hear any signals exchanged between the "Kern" and the "Elder"? A. Yes, sir.

Q. What signals did you hear?

A. The first whistle I heard was one whistle from the "Elder," and the pilot on our boat answered with four whistles—[243] four short blasts. And about—not quite a half a minute afterwards the "Elder" blew one whistle again.

Q. Yes.

A. And our pilot answered with four short blasts.

Q. Now, what lines did you have out when you heard the "Elder's" first whistle?

A. I had the port head-line out.

Q. Had that been made permanently fast?

A. Yes, sir, it was made fast on the scow or on the barge.

Q. Was it cinched up on the "Kern"?

A. No, sir.

Q. What do you mean by having it cinched up?

A. We had it to the gypsy-head and was going to heave in on it and was going to back up—about to swing the barges around to get into them.

Q. What is the gypsy—what do you call the gypsy? A. Head on the winch.

(Testimony of Arne Arneson.)

Q. Did you ever back up to swing the barges in place? A. No.

Q. Now, what did you do after you heard the first whistle from the "Elder" and the first four whistles from the "Kern"?

A. At the time I heard them whistle I was busy with the line—to get that line out on the barge.

Q. What did you do after that?

A. I stood looking at it for a while and the Mate Anderson, he told me not to make it fast yet—to see what he was going to do.

Q. Did you see the "Elder" at that time?

A. Yes, sir.

Q. Where was she? [244]

A. She was above us about half a mile, that is, at the time she blew the first whistles.

Q. When you say above, what position was that with respect to the lines of your vessel?

A. She was exactly downstream—right astern of us.

Q. Right where? A. Right astern of us.

Q. Right astern of you? A. Yes, sir.

Q. And what lights, if any, could you see on the "Elder"?

A. Could see the starboard sidelight and the port sidelight and the masthead light.

Q. Did you continue to watch her after that?

A. What is that?

Q. Did you continue to watch the "Elder" after that?

A. Yes, sir; was looking at it all the time.

(Testimony of Arne Arneson.)

Q. What, if any, change could you see in her lights?

A. Well, when she came close enough to us, that is, after she blowed that second whistle, she kind of swung off to the Washington shore. I could see the masthead light and the port sidelight.

Q. Swinging to which shore?

A. To the Washington shore.

COURT.—Which was that?

Mr. CAMPBELL.—I am speaking now of the “Elder.”

Q. What did you do with your vessel?

A. What was that?

Q. What did you do with your vessel, or what was done with your vessel?

A. I heard the bells, but I couldn't tell what kind of bells it was, but, however, from the way the barges moved I believed [245] we were going ahead.

Q. What makes you think that?

A. Well, because that was the only way—that is my idea—that we could get out of her way.

Q. Which way did your boat move?

A. She moved—that is, she was heading more for the Oregon shore.

Q. For what shore? A. For the Oregon shore.

Q. For the Oregon shore?

A. The Washington shore, I mean.

Q. What did you do—what became of your line when the “Elder” struck the “Kern”?

A. Well, the line run overboard.

Q. You let it go? A. Yes.

(Testimony of Arne Arneson.)

Q. And what kind of a blow was it that the "Elder" gave the "Kern"?

A. Oh, a pretty hard blow, she swung her right square around.

Q. Swung right square around. Was she swung around before the blow? A. No.

Q. What position did the "Elder" come at the "Kern" at the time of the blow?

Mr. DENMAN.—He said from the Washington shore.

A. Well, hit her just the starboard quarter aft.

Q. Which side did you look at the "Elder" as you saw her coming down—which side of the "Kern"?

A. On the starboard side.

Q. On the starboard side? A. Yes, sir.

COURT.—You were on the starboard side, you say?

A. Yes, sir.

COURT.—Handling the lines?

A. I was on the forecastle-head at the time. [246]

Q. Where is the forecastle-head?

A. Forward on the bow.

Q. Part of the bow. How wide was it at the fore-castle-head where you were standing?

A. I don't know exactly how wide it is, but something like, where I was standing—about 12 feet.

Q. About 12 feet. Was the searchlight used that night? A. Yes, sir.

Q. What use was being made of it?

A. She was used on the barges for the men down there to see to make the lines fast.

(Testimony of Arne Arneson.)

Q. How long had you been on the "Kern" prior to the collision—how long had you been working on her? A. That night, do you mean?

Q. How long had you been working on her before the collision—how many days or weeks or months?

A. About twenty days, I think.

Q. During the time that you were on the "Kern" what use had been made of the searchlight?

A. Well, we always used it to make a landing.

Q. Make a landing. Do you know whether or not the searchlight was thrown back up the stream and on to the "Elder" that night?

A. It was not, because we couldn't swing it clear around.

Q. Couldn't swing it clear around? A. No.

Q. Did you hear any bells or signals aboard the "Elder" before the collision?

A. I could hear the telegraph, but I didn't know whether it was backing up or going ahead.

Q. How far away do you think the "Elder" was at that time? A. Oh, about 50 or 75 feet. [247]

Q. And how was she headed with respect to the "Kern"? A. Just about midships.

Cross-examination.

Questions by Mr. CAMPBELL:

You haven't talked this case over with anyone before you came here, have you?

A. Not before yesterday. I was talking it over with the fellows.

Mr. CAMPBELL.—You talked it over with me also, didn't you?

(Testimony of Arne Arneson.)

A. Yes, sir.

Mr. DENMAN.—Now, Mr. Campbell, just leave the witness in my hands, please.

Mr. CAMPBELL.—I don't like the inference contained in a question of that sort. You know very well, Mr. Denman, that the witness has talked this matter over with me.

Mr. DENMAN.—He knows it now. It is perfectly fair in cross-examination to find out what the witness has done without counsel coming in and making suggestions. (To witness.) There is nothing wrong in that. That is entirely proper to talk it over with your counsel all you please.

Q. Now, as I understand it, when the "Elder," finally came to you she was going more off the Washington shore than when you first saw her back down the stream? That is correct, isn't it?

A. She was heading right the same way as we were.

Q. No, I mean when she finally came for you right at the end, she was heading then more around from off the Washington shore, that you testified to, did you? A. Yes.

Q. That is correct, isn't it? A. Yes.

Q. Now, I mean right within the last half minute. She then begun to swing around towards you—hadn't she? [248]

A. Well, she was—that is when she was backing up the bow was to us all the time until she struck.

Q. Now, as I understand it, you were making fast these lines? A. Yes, sir.

(Testimony of Arne Arneson.)

Q. Were you busy making fast the lines when you say you saw the "Elder" behind you, or had you finished making fast?

A. Had two turns around the gypsy-head and was going to start in the winch to heave it tight, and the mate told me to hold on and see what else he was going to do, and she was getting pretty close to us.

Q. Where was the mate standing?

A. He was on the forecastle-head.

Q. On the forecastle-head—what is his name?

A. Anderson—Ed Anderson.

Q. How much slack did you have in that line?

A. Most of the slack was taken up.

Q. Most of the slack was taken up. Did you have ten feet of slack in it? A. No.

Q. Didn't have ten feet of slack? A. No.

Q. Less than that?

A. Oh, about four or five feet.

Q. Four or five feet of slack—that line was broken by the crash, wasn't it?

A. I didn't notice that, I don't think so.

Q. You think it stayed tight to the end, do you?

A. Because I took them turns out of the gypsy-head as soon as she struck.

Q. Well, when she struck was that five feet of slack taken up? A. Yes. [249]

Q. That was taken up. So all the "Kern" had to do was to go ahead five feet to take up that slack. That is correct, isn't it? All she had to do was to go ahead five feet to take up that slack—that was all, wasn't it?

(Testimony of Arne Arneson.)

A. Yes, the bow was up against the starboard barge at the time.

Q. As I understand it, you say the barges were pointed before the collision, square away from the Washington shore—right out to the stream towards the Oregon shore?

A. Not quite crossways, but kind of slanting downstream, but was heading for the Oregon shore.

Q. And you—and your boat had your port bow against them and the stern toward the Washington shore. You made fast by the bow towards the barges and the stern toward the Washington shore.

A. We was heading perfectly downstream.

Q. Perfectly downstream?

A. At the time.

Q. At the time of the collision? A. Yes, sir.

Q. And she struck you in that position and drove you around? A. Yes, sir.

Q. And you say when you first saw the “Elder” she was about half a mile astern of you?

A. She was just about half a mile astern of us.

Q. Then you heard that whistle right then—that first whistle? A. Yes.

Q. And now couldn't that have been three-quarters of a mile?

A. Well, I ain't sure about that. I know she was just abreast Cooper's Point.

Q. And you were right opposite Waterford?

A. Yes, sir. [250]

Q. Now, when you say—speak of these intervals of time, how certain are you that it was thirty sec-

(Testimony of Arne Arneson.)

onds between the time that you first saw that vessel and the time she struck you? Was it thirty seconds or how long?

A. From the time I saw her until she struck?

Q. Yes.

A. Oh, about two minutes—between two and three minutes.

Q. Between two and three minutes between the first whistles—

A. It couldn't be any more between the first whistle until she struck us.

Q. Do I understand that the mate said to you, when this steamer was opposite Cooper's Point, "Look at that fellow; we don't know what he is going to do"?

A. That was after the second whistle was blew.

Q. Then you didn't turn to look until the mate called your attention after the second whistle?

A. I seen the boat from when she blew the first whistle.

Q. But you just said what made you look was the mate calling your attention to it, and up to that time you had been fixing these wraps on the winch. How do you account for that?

A. We had that line out, that is, it was made fast on the barge. That is, after the "Elder" blowed her first whistle and the fellows on the scow made fast, and I took in all the slack I could get by hand, and took two turns a round the gypsy-head; then she blowed her second whistle; then the mate told me to see what them fellows was going to do because she

(Testimony of Arne Arneson.)

was pretty close to us then; then he was running right for our stern.

Q. Running for your stern?

A. Yes, sir.

Q. But you say he seemed to be going more off the Washington shore at that time? [251]

A. No, sir; the way it looked—that is, I was on the starboard of the boat; took the port line across the bow to the starboard side, and took it around the gypsy-head and I was looking out on the starboard side.

Q. Well, you were running right down the regular traveled route at that time—the usual course downstream—your vessel?

A. Well, close to that, I guess.

Redirect Examination.

Q. Mr. Arneson, can you tell accurately the distances on the water at night?

A. Well, pretty close, that is, by the lights on shore—a short distance.

Q. That is, for a short distance you say?

A. Yes, sir.

Recross-examination.

Q. Now, how many turns—how many wraps did you make—what did you do with the line or what were you doing with the line when you first saw the “Elder”?

A. I got the line on the scow; the fellows pulled that line in and I was going to put the eye upon the bitt.

Q. As you were going to put the eye around the bitt

(Testimony of Arne Arneson.)

you saw the "Elder" at that moment?

A. I saw the "Elder's" three lights before I threw out the heaving line.

Q. Then you threw the heaving line down?

A. Yes, sir.

Q. Then it was after you saw the three lights that you heard this first whistle from the "Elder"?

A. Yes, sir.

Witness excused. [252]

Testimony of Albert Crowe, for Libelant.

ALBERT CROWE, a witness called on behalf of libelant, being first duly sworn, testified as follows:

Direct Examination.

Questions by Mr. CAMPBELL:

How old are you, Captain?

A. Fifty-three.

Q. What is your business?

A. Marine surveyor.

Q. What do you mean by marine surveyor?

A. I examine damaged vessels, look after loading, discharging, general care of the ship.

Q. How long have you been engaged in that business? A. Nine years here in Portland.

Q. What had been your business prior to that time? A. Building sailing ships.

Q. How many years experience have you had as ship master? A. Seventeen.

Q. I will ask you whether or not, in your judgment, it is possible to judge distances on the water at night with any degree of accuracy? A. Not very close.

(Testimony of Albert Crowe.)

Q. Did you ever visit the scene of the wreck of the "Kern"?

A. On the 19th day of August; the day following the night of the collision; I went to make an examination of it.

Q. Did you take any bearings at that time for the purpose of locating the position of the wreck?

A. Went right on the wreck—on top of it; took hold of the mast of the wreck, top of the mast—got the location.

Q. Did you take any bearings to show the position?

A. Yes, sir. [253]

Q. Can you locate upon this chart, or have you located upon the chart marked "Libellant's Exhibit 4" the location of the wreck?

A. That is the chart I put the location on.

Q. Now, will you mark upon this chart with the letter "K" the position in which you found the wreck when you took your bearings. (Witness does so.) Where is it with respect to the crossing of the two lines?

A. At the intersection of the two lines.

Q. What bearings did you take, Captain Crowe, from the wreck?

A. I took three sets of cross-bearings. That was the result of the three of them. Two of them were land projections.

Q. Will you mark upon the chart, using the figures 1, 2, 3 and 4—whatever may be necessary to show the land marks which you used in obtaining the bearings?

(Testimony of Albert Crowe.)

A. (Marking.) From the place of the wreck looking toward Eureka the line drawn so it will touch the water and the most southern point of the Washington shore, would lead from the tenth window of the Eureka cannery.

Q. Mark the tenth window as near as you can with the figure 1.

A. That gave me my line over the ship somewhere on that line. To find out where she was on it I took a set of cross-bearings from the Waterford fisheries.

Q. Mark your Waterford fisheries too—mark it 2.

A. (Marking.) Looking right across Wallace Island is a lowering of the hills like a “V” shape; a very clear defined line. We were in a transit line between the Waterford fisheries and the center of this “V” opening formed by the hills.

COURT.—Mark that “V” opening with a 3, please;—I mean formed by the hills. [254]

A. I couldn't do that exactly on that chart. You must look on the ground.

Q. How did you locate the line then running from “K” to “2”?

A. From “K” to “2” by—well, I done it at that time—I done it afterwards when we were lifting the vessel—when *the* had the salvage vessel alongside—in lifting her.

Q. Captain Crowe, did you measure the distance that the “Kern” was off the Washington shore?

A. I took it and marked it on this chart at the time.

Q. What distance was it?

A. The “Kern” was lying 990 feet from the near-

(Testimony of Albert Crowe.)

est Washington shore.

Q. Now, how far was she lying from the Oregon shore?

A. About—from Wallace Island she was pretty near three-quarters of a mile.

Q. Did you take any soundings, Captain, of the water? A. Yes, sir.

Q. What soundings did you find?

A. 68 feet of water.

Q. Where? A. Right at the wreck.

COURT.—Show me the margin of Wallace Island?

A. (Witness indicates.) Between it and the Oregon shore.

COURT.—That was the northern shore of Wallace Island?

A. Yes, sir; the northern shore of Wallace Island.

Q. What depth of water was there, Captain, between the wreck and the Wallace Island shore?

A. I didn't sound that far over. I took that depth around the vicinity in order to see and make plans for my salvage.

COURT.—That chart shows the depth there, doesn't it? A. Yes, sir. [255]

Q. Is that in feet or in fathoms?

A. It is 63 feet.

Q. The figures in the white portion are what?

A. Fathoms.

Q. And the shaded portion is in what?

A. In feet.

Q. Now, Captain, did you have anything to do with the raising of the "Kern"? A. Yes, sir.

(Testimony of Albert Crowe.)

Q. Did you see her when she came to the surface?

A. I was there at intervals through the lifting. I helped to make the plans for the lifting and was down at different days—different times to see how they were getting along.

Q. Were you there when she actually came to the surface?

A. I was there when—no, not when she was altogether up—the last two or three days before she was up.

Q. No, I am asking if you were there when she actually came out of the water?

A. I was there when we had her lifted. I was there first when they had one end up. She had gone down, broken some of the chains; had her partly clear of the bottom for a number of days.

Q. More specifically, were you there when the top of her pilot-house first came up above the water?

A. No, I don't think I was.

Q. Did you see the "Kern" after she was in the drydock? A. Yes, sir.

Q. I hand you a photograph and ask you whether or not that correctly shows the place where the "Elder" cut in to the "Kern"?

A. That shows the place, but it doesn't show it as far in [256] as it went.

Q. How deep was the cut?

A. The cut on the main deck went in within ten inches of the center line, the center fore and aft line of the ship, and on the bottom of the hull, it went into the shaft, went into the second garboard.

(Testimony of Albert Crowe.)

Q. What do you mean by the second garboard?

A. Well, it is the second plank from the ship's body.

Q. Which garboard, the port or starboard?

A. The starboard, until it broke the shaft.

Q. What was the distance of the innermost point of the cut on the main deck from the side of the vessel, the rail?

A. It would be about twelve feet.

Q. About twelve feet, and how far forward, Captain, of the stern of the "Kern" was the innermost cut in the deck?

A. It was on the deck; it would be nearly twenty feet; it was eleven feet forward of the stern post. The overhang—you couldn't measure that exactly, as the whole after part of the vessel was hung and connected to the main body by tackles and chains. At this cut on the side, or right from this cut over to the port side, the whole decks were broken right clear across, and the after end of the vessel was all loose, connected and held to the main body by tackles and chains.

Q. Who put those on? A. The salvors.

Q. How wide was the cut at the guard of the "Kern"?

A. Oh, I think about—the bulwarks were broken and a very wide gap right at the covering board or the guard rail, of [257] the vessel; but in further the cut was clear and well defined; but the timbers were all broke up at the rail, at the outer side of the vessel.

(Testimony of Albert Crowe.)

Q. How was the forward side of the cut? What was the nature of the forward side of the cut?

A. Oh, it was broken, it was ragged, except that nearly in towards the center line of the ship, the cut was very well and clearly defined. The rest was all broken, ragged.

Q. Of what character of timber was the "Kern" constructed? A. Eastern white oak.

The COURT.—She was a wood vessel entirely?

A. She was a wood vessel built out of Virginia oak, but she had been redecked with Oregon fir.

Q. Did she have any copper plating on her?

A. Copper sheeting on her, yes.

Q. What was the size of her frames, Captain?

A. I really do not remember the size of her frames.

Q. Have you any memorandum that would refresh your recollection on that?

A. I may and I may not; I am not sure about that, that I have. At that time, I don't think I kept a record.

Q. In your best judgment, now, what would you say was the size of them?

A. It would be about ten by twelve.

Q. Ten by twelve; and how would they be placed with respect to centers?

A. At that portion of the vessel, it would be about eighteen inches apart from center to center. In the bottom of the vessel she was tight, a close frame.

[258]

Q. The frame you said was white oak?

A. At that portion she was open spaced; but all the

(Testimony of Albert Crowe.)

whole bottom of the "Kern" was framed close like that. You take the planks off and if you had a good pump, you could keep her afloat.

Q. The planking off the outside?

A. Yes. The construction of that vessel was such that if you took the planking off of the bottom, she was so tightly framed, if you had good pumps, I think you could possibly keep her afloat.

Q. How far out from the second garboard did that condition extend?

A. That was all along under the body of the vessel and under the engines, and so on like that.

Q. Was any of that portion of her damaged?

A. Well, no. The open frame space is where the damage occurred.

Q. How many frames were broken, if you know?

A. I really don't recall that. I think there were about five.

Q. Was there any damage on the port side?

A. The port side of the deck, beginning at the last end on this cut made by the "Elder," the deck was broken from that right clear across to the other side. The whole after end of the vessel had wobbled out of line and was held to her main body by tackles and chains.

Q. Have you ever had any experience in salving other vessels damaged in collisions?

A. Quite considerable.

Q. I will ask you whether or not in your judgment, based upon your experience, the steamer "Elder"

(Testimony of Albert Crowe.)

was practically at a standstill [259] at the time of this collision?

A. The "Elder" must have had enormous headway for to carry her in through the white oak timbers, through the big guard rails, covering boards and frames, ceiling, and crashing in right through, and to get in that far, she must have had enormous headway on her.

The COURT.—How many feet did she go in?

A. She went in twelve feet on the side. Rather, more than twelve feet; twelve feet and the thickness of the guards besides. Well, it may have been a few inches one way or the other. The beam of the "Daniel Kern" is twenty-six feet and three inches, I think. Well, at that place, the beam would be diminished a little. She went in within ten inches of the fore and aft center line, consequently she must have gone in about twelve feet, or twelve feet and some two or three inches.

Q. What was the nature of the wood, of the ceiling?

A. The ceiling was principally pitch pine. The clamps, part of the timbers, the deck frame was oak and some of the streaks, the ceilings were oak and some were pitch pine.

Q. What were her deck beams made out of?

A. The deck beams were oak.

Q. Were any of those broken? A. Yes.

Q. What size were they?

A. As near as I could remember those, they would

(Testimony of Albert Crowe.)

be about ten by twelve; perhaps a little larger; they were large beams.

Q. Do you know what the "Elder" had inside of her stem?

A. Inside of her stem? No, I think not.

Q. Did you make any repairs on her prior to this collision at any time before that? [260]

A. No, sir, not before this. Oh, the "Elder." I beg your pardon. I had occasion to go down,—the "Elder" rammed our lower ferry here, cut in through the guards, and while making an examination of the ferry-boat, the bow of the "Elder" was only a few feet away; I asked the chief engineer and the carpenter on the—

Q. (Interrupting.) Well, don't state any conversations that you had at that time. Just go ahead and tell what you did, if anything.

Mr. DENMAN.—You are not going to try this other collision case?

Mr. CAMPBELL.—No, no; but I am leading up to something else very important.

A. I found plates broken right through on the "Elder," and to repair that so that she would not lose any time, at the second frame space back from her stem of the "Elder," I put a bulkhead across, filled that solid with cement right up and down there for a number of feet; and that is what she rammed the "Daniel Kern" with.

Q. Are these models prepared to scale, Captain?

A. They are.

(Testimony of Albert Crowe.)

Cross-examination by Mr. DENMAN.

Q. Did you prepare these models? A. Yes, sir.

Q. This indicates the angle at which they struck, does it not?

A. That was only put in at random. The angle at which the "Elder" entered the "Daniel Kern" was thirty-four degrees abaft the beam, as measured when we got the vessel up. That cut there (indicating) I didn't take the time.

Q. It is approximately the same thing? [261]

A. That is approximately. The break would possibly show a little further aft. Thirty-four degrees is the center of the cut where it was clearly well defined.

Q. Did you ever examine the bow of the "Elder" after this collision?

A. I remember of telephoning Captain Patterson at Astoria, to find out on that occasion about whether there was any damage on her or not. I believe to the best of my recollection now that I did. I don't think that I seen the vessel probably until the next trip or two, and then I don't really know whether I went down and examined her or not; I would not be sure.

Q. When was it that you saw this cement in her?

A. The cement I put in previous to this at the time that she—I could not tell you the date of that until I turn to my books. I could give you the exact date of that from my records.

Q. Where would you expect to find the injuries on the "Elder," on the starboard or port bow, from this collision?

(Testimony of Albert Crowe.)

A. Wedging in there, I would expect to find scratches on both bows.

Q. I mean, but suppose you found serious injuries on one side and not on the other, which side would you expect to find it on?

A. Coming in the way she did.

Q. She was coming around too far square on; it might come either way?

A. The inner part of the cut, say from halfway in to the rail, from that into the center of the vessel, the cut was clean, and you would get pressure from both sides.

Q. Have you been a navigator? A. I have.

Q. A good many years, haven't you? [262]

A. Yes, I have been around the world quite a number of times.

Q. Have handled vessels?

A. I think so. I think my record will establish that part.

Q. Ever handled the "Elder"? A. No.

Q. She is a usual type of steam vessel, isn't she, on these waters?

A. She is not the modern, but she is the usual shaped vessel.

Q. Do you know what her power was?

A. No, I really don't.

Q. She is the type that is operated in and out through the docks of these various ports here, is she not? A. Yes.

Q. How much space would she turn around in?

A. The diameter of the circle, you mean?

(Testimony of Albert Crowe.)

Q. Yes.

A. Well, approximately half a mile.

Q. Half a mile. Suppose you put her helm hard aport when she is going full speed ahead, how much would she turn in five hundred feet to starboard?

A. Turn not very much.

Q. How much?

A. Hard astarboard or hard aport either one, going at her full rate of speed in going five hundred feet, it would not change more than fifteen or twenty degrees.

The COURT.—How much?

A. About, I should say, fifteen; not to exceed twenty degrees; not going fourteen knots of speed.

Q. That is about two points?

A. Twenty-two. [263]

Q. About two points she would swing?

A. Fifteen or twenty degrees,—less than two points.

Q. Now, she would swing, of course much more—

A. (Interrupting.) After you get headway on her.

Q. Yes. A. You get her once swinging.

Q. The second five hundred feet, she would go a good deal more?

A. Yes, she would go a good deal more.

Q. Suppose you were half a mile astern of a vessel pointing straight down the stream ahead of you, and there was eight hundred feet of clearance between the starboard side of that vessel and the shore,

(Testimony of Albert Crowe.)

could you send your vessel over enough in the half mile to clear the other vessel? A. Could I?

Q. Yes. A. I could, yes, sir.

Q. Would you have any difficulty about it in a half mile?

A. I would not but it would depend on—

Q. (Interrupting.) I am presuming now—

A. (Interrupting.) No, there would be no difficulty.

Q. No difficulty at all?

A. In a half mile, no.

Q. Would you in five hundred feet, have any difficulty?

A. Yes, you would have lots of difficulty.

Q. Why, you say she would swing twenty-two?

A. She would swing fifteen to twenty degrees in going it.

Q. All right; now, how many feet would that swing her over— A. In five hundred feet?

Q. Yes.

A. That is pretty nice calculation. I would have to go to [264] work and do it; not in my head, I couldn't do it.

Q. She would easily swing a hundred feet to her starboard in running five hundred feet with her helm hard aport?

A. Not at all; she wouldn't swing nothing like a hundred feet.

Q. She would not? As a navigator, you are willing to go on record? A. I surely am.

Q. How many feet would she swing?

(Testimony of Albert Crowe.)

A. Probably thirty or forty feet.

Q. Probably thirty or forty feet?

A. Depending on the class of vessel, whether she is fine lined; whether she answers her helm. There is an awful lot of difference in the vessel. Some vessels would not move at all; other ones would take a good little. It would depend a great deal on the vessel.

Q. So the man who knows the vessel is the real authority on that?

A. The man that knows his vessel knows better than anybody else; the man that has been there and been controlling her, he knows that better than an outsider.

Q. Now, working in or out of these rivers, of course you do have to pass under those circumstances. You get up in five hundred feet of a vessel very often and have to pass one side or the other, don't you?

A. Oh, yes; sure.

Q. The difference between a thousand feet and five hundred feet is a great deal, because you get going in the first five hundred feet and in the second you get going a good deal, don't you?

A. Yes, sir. [265]

Redirect Examination by Mr. CAMPBELL.

Q. Just to clear up this model, Captain, I want to ask you whether or not the forward side of the cut made in the small model is intended to represent the angle of the forward side of the cut as it actually existed in the "Kern"?

A. No, it is not. The cut was just made in there

(Testimony of Albert Crowe.)

at random. As I measured the cut in the "Daniel Kern," the center of the inner part of that was well defined and clear. Following that out, it gave me an angle of thirty-four degrees that the "Elder" entered the "Daniel Kern" at thirty-four degrees abaft the beam. That was carefully measured.

The COURT.—I see on the model a line marked clear across the model. Does that indicate where the boat was broken in two?

Q. What does the pencil-mark across from the inner part of the cut to the port side indicate?

A. Yes, sir, that was just to represent where she was broken across.

Mr. CAMPBELL.—That is all.

Recross-examination by Mr. DENMAN.

Q. By the way, have you not seen, Captain, vessels approaching a dock in San Francisco harbor, say where the timbers are very often twenty-four inches in thickness, at a speed of two or three knots, moving in and crash right in and cut through those timbers and cut in fifteen or twenty feet into the dock?

A. All owing to what weight and momentum is behind them.

Q. Yes, but at a speed of two or three knots. You have seen that, haven't you? [266]

A. No.

Q. Haven't you seen these liners being operated by a tug where there has been a slip in the calculations and the tug take her in and jambs clean in fifteen or twenty feet?

A. If there is a big weight in motion, take a great

(Testimony of Albert Crowe.)

big steamship and say she has ten thousand tons of cargo in her, and her speed is two or three knots, then when she hit, she may go in a good deal more than two or three feet.

Q. Yes, and crash timbers a great deal bigger than on those ships?

A. Yes. We have had them here in Portland. I have one in mind now, that the pilot thought he had her nearly dead, on the east side of the river here, and she went in through the piling, stringers, railroad track and everything else, when he thought he had her practically stopped. It is the weight.

The COURT.—What was her weight?

A. She had six thousand tons of railroad iron and the vessel herself would weigh about four thousand or four thousand five hundred tons.

Q. What was her length, do you know?

A. Beg pardon.

Q. How big a vessel?

A. Oh, the vessel was about three hundred and seventy-five feet long.

Q. A sharp vessel or round?

A. A modern tramp.

Q. The sharper the vessel of course—

A. (Interrupting.) The sharper in going into wood, she will cut further. [267]

Q. As I understand, this bow of the “Elder” was quite sharp?

A. Yes, sir, the bow of the “Elder” was quite sharp.

Q. Then when you say its momentum, that does the

(Testimony of Albert Crowe.)

cutting, is it not? A. Yes, sir.

Q. And that is especially true where the vessel is as this vessel was, up against heavy barges?

A. I don't understand that at the time of the impact that she was against the barge.

Q. Oh, well, that is the testimony here.

Mr. CAMPBELL.—Is that the testimony, Mr. Denman?

Mr. DENMAN.—What is that?

Mr. CAMPBELL.—As I understand, she pushed her right ahead and shoved the barges around.

Mr. FULTON.—You were trying to show damage on the port side.

Mr. CAMPBELL.—By being pushed against the barges. But the evidence does not show at the time she struck she was up against the barges.

Mr. DENMAN.—But there is no evidence to show the cut was made at the time she hit, or when she shoved into the barges.

The WITNESS.—My understanding of the cut is when the "Daniel Kern" was laying near the stern of the port barge, but not up against it.

Q. (By Mr. DENMAN.) I see; but if the situation was this, that the "Elder" was coming along, say four or five knots, three or four knots, and she strikes the "Kern" and pushes it up against the barges and then keeps on pressing it, she would cut in, wouldn't she? [268]

A. Not after he hits it. She would do more cutting with the momentum that hits.

Q. The momentum keeps on. Suppose she strikes

(Testimony of Albert Crowe.)

a vessel in the water and shoves it on ahead of her into the shore? A. Yes, sir.

Q. And then she keeps on going, she will keep the momentum, wouldn't she?

A. The result of shoving the "Daniel Kern" ahead, was she hit the port side of the "Kern" against the rock barges and broke the deck off. That was what was done after the hit.

Q. How can you tell it was after the hit or when it was just shoving her ahead?

A. Because the injury will be a cut at that time. It will not be a break. And the break is from tension being put on the hull of the vessel, and we arrived at that by running against the barge afterwards, after the impact.

Q. How can you tell that? How can you tell whether or not—

A. (Interrupting.) I am drawing that conclusion, because there is no other way we could arrive at it. As the "Elder" hits the "Daniel Kern" with her sharp bow, we will say, considering it was sharp, she cut in through the side. Now, if she had momentum enough and there was nothing on the other side of her, she would have gone right clear through her; but that is not the case. She cut into the thin inches, in the center line. The evidence as we have it in this break, is there had to be something that created a tension on this. That would break the rest of the deck from the center line across to the port side, the hitting; I presume—this is a supposition, that she hit the

(Testimony of Albert Crowe.)

port barge,—then it was very easy for her to break it off. [269]

Q. Now, suppose she hadn't broken off at all; suppose her position is that (illustrating with model) and she comes along and strikes like that the "Daniel Kern." (Illustrating.)

A. Certainly, a light vessel.

Q. What is her tonnage?

A. She was made out of white oak.

Q. What is her tonnage?

A. Oh, I really don't know what it is now, I could not answer that.

Q. Approximately?

A. About three hundred and sixty or four hundred tons.

Q. What is the tonnage of this vessel?

A. About fourteen or fifteen hundred tons. I can tell you in a minute. (Witness refers to memorandum). The "Daniel Kern" is four hundred and fifty tons gross measurement; and I would say that the "Elder" was fourteen hundred tons.

Q. Your estimate here was given on the basis of fourteen hundred; that is your original estimate?

A. That was just roughly. I think she is greater in her gross tonnage.

Q. What is her gross tonnage?

A. I don't know.

Q. Now, isn't it over three thousand?

A. No. I don't think it is three thousand at all.

Mr. CAMPBELL.—Did you obtain that from Lloyds Register?

(Testimony of Albert Crowe.)

A. Yes, sir; or the United States list. I don't think her tonnage is three thousand gross.

Q. What would you estimate she was drawing at that time? A. What?

Q. The "Elder"? [270]

A. Probably fifteen feet.

Q. Fifteen feet? A. Ten or fifteen feet.

Q. And you estimate she was somewhere around fifteen hundred tons in gross tonnage?

A. No, no, not tonnage.

Q. Gross tonnage is what she hits with, isn't it?

A. Oh, yes; she hits with both.

Q. I mean to say, when you are speaking of momentum you don't mean to take the small figures; you take the gross tonnage, don't you?

A. We must either talk in reference to gross or the net.

Q. That is what I want you to do.

A. And as we take the "Daniel Kern," we have her gross tonnage four hundred and fifty; it is a usual thing with a steamer that the gross tonnage is about two and a half times the net.

Q. What is the net tonnage of the "Kern"?

A. I don't know. I have got the gross tonnage of the "Kern" here on my reports.

Mr. FULTON.—What did you say your gross tonnage was?

A. Gross tonnage of the "Daniel Kern" four hundred and fifty tons, gross measurement.

Q. Now, when you were speaking of the "Elder" as being fifteen hundred tons gross, that was the es-

(Testimony of Albert Crowe.)

imate you had in mind in speaking of this impact?

A. Oh, no, not the weight. Weight is quite a different thing. No; measurement tons are not weight tons, in an impact.

Q. What was the amount of tonnage behind, the weight tons behind the "Elder" when she struck the "Kern"? A. I could not tell you that. [271]

Q. You don't know that?

A. I really don't know what cargo she had in her.

Q. You don't know that?

A. I don't know that.

Q. May I see your report?

(Witness here passed said report to counsel.)

Redirect Examination by Mr. CAMPBELL.

Q. Captain, I will ask you whether or not in your judgment there would have been any difference in the depth of penetration into the "Kern" if she had been standing still instead of moving at the time of the actual impact?

A. The depth of the cut would be less.

The COURT.—That is, moving away from the "Elder"?

A. Moving away from the "Elder," yes, sir.

Recross-examination by Mr. DENMAN.

Q. She was really moving across the bows of the "Elder," wasn't she?

A. She must have been moving in that direction.

Q. Yes; across the bow though, rather than—

A. (Interrupting.) No; at thirty-four degrees, the cut showed thirty-four degrees; now she was going away in that same line.

(Testimony of Albert Crowe.)

Q. But as I understand it, that is fifty-six degrees from parallel? A. Yes.

Q. So she was nearer at right angles, than she was parallel?

A. This will show exactly. (Referring to model.) As the "Elder" was coming there. Now, as she is going away, she will tend to decrease the impact.
[272]

Q. She does not go sideways, does she, Captain?

A. No, she doesn't go sideways.

Q. You pushed her that way (indicating).

Mr. CAMPBELL.—Let him manipulate the models.

The WITNESS.—Before she hit. To the best of my ability to place this wreck, the "Kern" was—

Mr. DENMAN. — (Interrupting.) Now, you weren't there, were you, Captain?

A. No, I wasn't there, but I think that is the way this vessel was; and when he started to go ahead of course—

The COURT. — (Interrupting.) That is, the "Kern"?

A. The "Kern," he would go this way; his propeller would throw her stern that way (illustrating).

Q. Let me ask you, would she go that way?

A. She goes ahead. She would go nearly ahead, but throwing the stern to port, the bow to starboard as she started.

Q. She would go nearly ahead but would throw—

A. (Interrupting.) She would go nearly ahead,

(Testimony of Albert Crowe.)

but the stern would go to port and the bow to star-board.

The COURT.—That is, the stern would be moving away from the “Elder” faster than the bow of the “Kern”?

A. Yes, sir. The motion of the propeller starting would throw her that way.

Q. That is very slight, though, in the beginning, isn’t it?

A. Well, at the start it is quicker and more than it is afterwards.

Q. I know, but in the beginning, it is very little, any way?

A. You use that manoeuver to turn a vessel around with.

Q. I know, if you keep it up long enough. [273]

A. Well, the very first motion of the propeller, the action throws the stern to port.

Q. That is especially true if the bow is over so the bow can turn? A. Yes, sir.

Mr. DENMAN.—That is all.

Mr. WOOD.—Wait a minute. I would like to ask a question, with leave of counsel. I think you made the witness really your witness on this point.

Redirect Examination by Mr. WOOD.

Q. You were asked, Captain, about how far a vessel would swing in a distance of five hundred feet; on what rate of speed did you suppose your answer to be made?

A. It was assuming she was going full speed.

Q. Yes, but what mileage or knots per hour?

(Testimony of Albert Crowe.)

A. Well, in reference to the "Elder," that was fourteen knots.

Q. Well, now at that rate of speed, or even, we will cut it down to twelve knots, how much time would it take to pass over that five hundred feet?

A. A little over a half a minute.

Q. Well, then, did your answer suppose that the helm had been set at the five hundred feet and the swinging begun, or that five hundred feet away, the whole maneuver was commenced, the helm to be set?

A. That the maneuver was commenced that five hundred feet away, that my judgment would be that she could not possibly swing more than thirty to forty feet.

Q. Now, suppose at five hundred feet away, they just commenced to maneuver? [274]

A. That is what I said.

Q. No; I thought he said that the maneuver was already begun at five hundred feet.

A. At five hundred feet, you begin to put the wheel over. The helm man, when he gets an order, puts his helm hard over at five hundred feet away. Then I don't think a lot of vessels wouldn't move hardly anything; others, they would answer the helm very quick, would go thirty or forty feet swung over; but she would have to be very quick answering her helm.

Mr. DENMAN.—Were you ever master of a steam vessel? A. No.

Mr. WOOD.—Just a minute. I hadn't got through, Mr. Denman.

Q. Do you mean that the bow would make that

(Testimony of Albert Crowe.)

swing, or that the whole vessel would pass?

A. The bow.

Q. Just the bow? A. Just the bow, yes.

Q. Now, how long would it ordinarily take after getting the signal to set the helm over?

A. To get it hard over?

Q. Yes.

A. You couldn't get it over,—well, yes. It is all owing to whether he has hand gear or steam gear.

Q. Say hand gear? A. Hand gear?

Q. Yes.

A. It is all according to the strength of the man. With a very strong powerful man, he likely would. That would depend something on how hard the wheel would work, too.

Q. According to that, if he commenced the maneuver at five hundred feet, you would not even have your helm hard over [275] before you passed the distance of five hundred feet? A. That is right.

Q. So you have got to consider that, too, haven't you? A. Yes, sir.

Q. Now, they asked you about this cut in the "Kern" and there seemed to be an impression given in the record that momentum or weight was what did it.

Mr. DENMAN.—With a sharp bow.

Q. With a sharp bow. As a matter of fact, the force of any body striking or having an impact with any other body is made up always of two factors, isn't it, weight and velocity?

A. Velocity.

(Testimony of Albert Crowe.)

Q. Weight and velocity?

A. And velocity together.

Q. For example, a ton cannon ball, at the height of its trajectory or initial velocity, from the mouth of a gun, would go through a great deal greater distance than even a vessel, wouldn't it? A. Yes, sir.

Q. That is, because it has got a superior velocity?

A. Superior velocity.

Q. So a slow-moving mass would go more on account of its weight? A. Yes, sir.

Q. But the whole thing has to be determined by—

A. (Interrupting.) The velocity.

Q. By velocity and weight taken together?

A. Yes, that is right.

Recross-examination by Mr. DENMAN.

Q. Now, Captain, you were a sailing vessel captain, weren't you?

A. As master; I was always master of sailing vessels, wood and steel. [276]

Q. What is that? A. Wood and steel.

Q. You don't pretend to stand as an expert here on the handling of steam vessels, do you?

A. I have been a good deal on steam vessels.

Q. As master?

A. Not as master; I told you that before.

Q. You say you have been a good deal, what do you mean by that?

A. I have been passenger and on business, been up and down the river in my calling. I am down superintending the work for which I am paid and the purpose which I am here for, going down to Astoria

(Testimony of Albert Crowe.)

many, many times during the year.

Q. For the Underwriters, aren't you?

A. Yes, sir.

Q. The Underwriters are interested in this case, aren't they?

A. I believe the Underwriters are interested in both of these vessels.

Q. You have had a good deal of correspondence with the Underwriters about this case, haven't you?

Mr. WOOD.—We object to that.

Mr. DENMAN.—If they are interested in the case and they have corresponded with their agents regarding the case, that is certainly pertinent.

Mr. WOOD.—The Underwriters are not on record in this case. As a matter of fact, it is an Underwriter's fight on both sides but it does not appear so in the record. I can't see how correspondence between this witness and anybody he may represent would be relevant.

Mr. DENMAN.—But if this man has written to anybody any statements concerning this, we are entitled to see them. [277]

The COURT.—Well, you may ask the question. Objection overruled.

Q. You have had a good deal of correspondence, haven't you, with the Underwriters, about this case?

A. I have given them a copy of that report.

Q. You have had a good deal of correspondence with the Underwriters on this case, haven't you?

A. I would not say a great deal. I have given them information.

(Testimony of Albert Crowe.)

Q. And you have written letters to them, haven't you?

A. I have written one letter at any rate.

Q. Where is that letter?

A. Probably in San Francisco.

Q. Where is the letter-press copy of it?

A. I have copies of all my correspondence down in my office.

Q. How many letters have you written in all regarding this case?

A. Oh, that would be very difficult, I couldn't answer that, it is so long ago, whether I have written one or three or four. I could not tell you; I would not begin to attempt to tell you.

Q. You have a copy-book you put those in?

A. I have a copy-book.

Q. That is, a wet leaf copy? A. No.

Q. How do you do it?

A. These are carbon copies (indicating); and I usually make five or six of them.

Q. I am speaking of letters now, not reports.

A. Well, letters too. If I have business where there are two or three insurance companies, wherever I knew there are two or three different companies, in making my report, I will make probably two or three copies. [278]

Q. You can get those letters you have copies of here for me can you?

A. I have copies of all the correspondence that I have had.

(Testimony of Albert Crowe.)

Q. Will you bring them here to-morrow for me, please? A. I will.

Mr. DENMAN.—All right. Thank you.

Mr. CAMPBELL.—If the Court please, we object to any demand upon this witness to produce the letter between him and some insurance company in San Francisco. Now, as a matter of fact, one insurance company is partially interested in the outcome of this litigation, but the Columbia Contract Company here is far more materially interested in it, and how can any letter which this man has written to an insurance company in San Francisco, or the San Francisco board of Marine Underwriters, be binding upon the Columbia Contract Company?

Mr. DENMAN.—I am not arguing this as the admission of one of the parties. I am asking for these letters. This man has written about this occurrence—

The COURT.—(Interrupting.) I think you have a right to inquire—

Mr. DENMAN.—(Interrupting.) About what he said about it.

The COURT.—No, I don't think you can go that far. I think you have a right to inquire whether or not this witness has corresponded concerning this matter with other parties, but when you have done that, then I think you have gone far enough. I don't think you can get those letters now and prove by those letters statements that he made, or show what the correspondence was. I think that is a collateral issue. [279]

(Testimony of Albert Crowe.)

Mr. WOOD.—I would like to ask a question that may help this argument a moment: Who employed you to go down there?

A. Mr. Henry Hewitt.

Mr. WOOD.—To go down to the wreck?

A. This report is the best evidence itself. It tells who sent me there.

Mr. CAMPBELL.—Mr. Henry Hewitt, of the San Francisco Board of Marine Underwriters?

A. Yes.

Mr. CAMPBELL.—Who paid you, Mr. Crowe?

A. Mr. Daniel Kern.

Mr. WOOD.—Who first told you to go down?

A. Mr. Henry Hewitt, I think, gave me my first instructions, or he and Mr. Kern together were consulting together and with myself, and I went down to get at the facts as near as possible and as quick as possible, concerning this wreck.

Mr. WOOD.—And you were paid by Mr. Kern?

A. I was paid by Mr. Kern, nobody else.

Mr. WOOD.—I have been under the impression, as I stated in the beginning, and I claim that this stands of record as the suit of the Columbia Contract Company and that we employed and paid this witness and we would object to his correspondence with other people brought in to affect our rights.

Mr. DENMAN.—I will offer to show, your Honor, that the Underwriters have had subrogated to them an interest in the vessel and in the suit and that they are in fact either coprincipals with these parties or under contractual relationship, which makes them

(Testimony of Albert Crowe.)

identical as far as the employment of this man is concerned. [280]

Mr. CAMPBELL.—If the Court please, I don't deny that. As a matter of fact, this vessel was insured with a Firemen's Fund Insurance Company and the Firemen's Fund Insurance Company paid a loss on this I think before the wreck was raised, settled with Mr. Kern. My impression is that the amount that they settled for exceeded the amount of the actual damages in the case. This man, I think—Captain, don't you represent the San Francisco Board of Marine Underwriters?

A. Yes, sir.

Mr. CAMPBELL.—And is the Firemen's Fund Insurance Company a member of that board?

A. They are one of the largest members.

Mr. CAMPBELL.—Do you know whether the Thames & Mersey is one of the members of that board?

A. Yes.

Q. Do you know whether the Switzerland is a member of that board?

A. Yes, the Switzerland Marine.

Q. Do you know who represents in San Francisco, the Switzerland and Thames & Mersey?

A. Yes, Louis Rosenthal.

Q. Do you know anything about the insurance on the "Elder"?

Mr. DENMAN.—Of your own knowledge?

A. No, not on the "Elder," I don't know. I will tell you—strike that out.

(Testimony of Albert Crowe.)

Mr. FULTON.—Of your own knowledge, you are to testify.

The WITNESS.—I know from Mr. Louis Rosenthal that the—

Mr. DENMAN.—(Interrupting.) Well, I object to that.

The WITNESS.—That he, acting for— [281]

Mr. CAMPBELL.—Wait a minute. I think, if the Court please, with equal fairness, Mr. Denman who is here, as I am, from San Francisco, should state who is employing him and should state what company he is representing here.

Mr. DENMAN.—I was employed by Mr. Doe, who came to my office—he telephoned to me and sent Mr. Ozauf to my office to retain me in this case before it was brought and now I have had an admission on the part of the other side that there is a subrogated interest in the suit. As a matter of fact, the entire suit has been subrogated to the insurance company. They are the real parties in interest here. And here is correspondence between this man who was employed by them through Mr. Kern and had correspondence with them.

The COURT.—All you are asking for now is—the reason you are asking for his correspondence with these other parties is, as I understand it, it goes to the credibility of this witness?

Mr. DENMAN.—Yes.

The COURT.—Showing the interest that he has in this affair. Now, when you have shown that he has corresponded with these people, isn't that going far

(Testimony of Albert Crowe.)

enough with this? Isn't the rest of it a collateral issue?

Mr. WOOD.—I would like to have this on the record too. That while Mr. Campbell and I are together, I represent a different claim. I represent the Columbia Contract Company and he only has a partial interest, and the Columbia Contract Company has got the large and principal interest still remaining to it, and I object to our witness, our men whom we employed and paid, being called upon to bring in correspondence with other people. Or if he is not our man, if he is [282] the other people's man, I still object to it. I don't think the correspondence has any relevancy or materiality here.

Mr. CAMPBELL.—If the Court please, I would like to ask Mr. Denman whether he has not discussed the liability of the "Elder" with any Underwriter in San Francisco?

The COURT.—I don't think that is a proper—

Mr. CAMPBELL.—(Interrupting.) He is injecting into it a spirit of unfairness, and I would like to ask him.

Mr. DENMAN.—Oh, why, Heavens.

The COURT.—I will sustain the objection, and that will put an end to it.

Witness excused. [283]

Testimony of Daniel Kern, for Libelant (Recalled).

DANIEL KERN, was thereupon recalled on behalf of libelant and further testified as follows:

Direct Examination by Mr. CAMPBELL.

Q. Mr. Kern, is there any reason that you have for

(Testimony of Daniel Kern.)

having the steamer "Hercules" and the steamer "Daniel Kern" exchange light for loaded and loaded for light barges on the Columbia River?

A. Yes, sir.

Q. What reason is that?

A. On account of the shallow water above the mouth of the Willamette and we have to use a light draft boat on the upper end and this light draft boat isn't allowed to go any further than Astoria. The inspectors don't allow these shallow boats to go to Ft. Stevens, where we deliver the rock, and therefore we have to use a deep draft boat on the other end and a light draft boat on this end.

Q. How long have you been engaged in transporting rock to the jetty by means of these barges and tugs?

A. Well, we started in with it about 1898; we haven't worked at it steady all the time, and not altogether to this jetty; we built a jetty at Gray's Harbor. We towed the rock the same way.

Cross-examination waived.

Witness excused. [284]

**Testimony of Charles W. Spaulding, for Libelant
(Recalled).**

CHARLES W. SPAULDING, was thereupon recalled on behalf of the libelant and further testified as follows:

Direct Examination by Mr. CAMPBELL.

Q. I hand you Libelant's Exhibit 8, Mr. Spaulding, and ask you who took the photograph?

A. I did.

(Testimony of Charles W. Spaulding.)

Q. I want to ask you whether or not that shows the position of the searchlight as the searchlight came out of the water when the vessel was raised?

A. Yes, sir. I stood there with my camera and took it when she came out of the water as you see it there.

Mr. CAMPBELL.—That is all.

Mr. DENMAN.—There is no question about the searchlight.

Mr. CAMPBELL.—You allege in your answer the searchlight was thrown in the face of the “Elder.”

Mr. DENMAN.—It had no causative effect. The same things were done whether the searchlight was thrown or not.

Mr. CAMPBELL.—Well, we have got to meet the defenses that are made.

Mr. DENMAN.—I know, but I am telling you now there is no question about that.

Witness excused.

Mr. CAMPBELL.—Now, if the Court please, with the exception of the element of damages, which apparently, with the time we are occupying with this case, we will be unable to hear before you go to San Francisco, which I understand will be [285] referred to a commissioner, that concludes our case with the exception of one witness, the mate, Henry Anderson, who is an officer aboard a steamer running from Tillamook to Portland and who has been bar bound at Tillamook during Sunday and Monday. We have sent a man down there for him and we expect he will be here to-morrow without question, and

we would like to have permission to call him when he reaches port. It has been impossible to get him here.

Mr. DENMAN.—Will he be here to-morrow morning, Mr. Campbell?

Mr. CAMPBELL.—I expect he will be here; it all depends on when that vessel gets out of the Tillamook Bar.

Mr. WOOD.—There is just one other possibility, though it is hardly a possibility; we may be able to get hold of another fisherman simply to testify about signals.

Mr. DENMAN.—The reason I asked is this: When their case is in, it is quite likely that after consultation with Senator Fulton,—we will go over the testimony—that we will not put in any case at all, the entire fault being made out, as we think, by their evidence; and if this matter were to go over until to-morrow morning, I think it is quite likely, we could avoid putting in any evidence. I should like to talk it over with the Senator and I should like to hear what this man Anderson is going to say. But with the record in the condition it is, we believe the entire fault to have been shown to have been that of the “Kern” and that we need bother the Court with no further evidence on our part. As I say, I want to consult with my colleague.

The COURT.—You will not know as to that then until this other witness is produced? [286]

Mr. DENMAN.—Until this other witness is produced, but if he is to be here in the morning, we will know at that time.

Mr. WOOD.—Well, if it will facilitate your consultation—not that we would expect you to be bound in any way,—the witness Anderson will simply be in a general way corroboratory of Moran as to the signals given and what was done on the “Kern,” and the fisherman if we get him, will be to the same effect as that young man that was on yesterday, that he heard the one whistle and the four given. That is all the testimony we expect. Corroboratory also of Arneson, that man who testified who was up on the fore-castle-head of the “Kern.”

Mr. DENMAN.—You can’t corroborate both, because one says the first whistle was blown when a thousand feet apart and the other says three-quarters of a mile.

Mr. WOOD.—I am not referring to those nice distinctions or differences. I am trying to tell you what their line of testimony will be in a general way.

Mr. DENMAN.—I think it might save the court considerable time if we are permitted to go over until to-morrow morning.

The COURT.—Very well, the court will take an adjournment until to-morrow morning.

(Thereupon court was adjourned until Wednesday morning, February 7, 1912, 10 o’clock A. M.) [287]

Portland, Oregon, February 7, 1912, 10 A. M.

Mr. CAMPBELL.—If the Court please, we found that the steamer did not arrive at Astoria in time for the man to reach here last night. He will come on this morning’s train—the noon train from Astoria.

COURT.—Then you rest, with the exception of that?

Mr. CAMPBELL.—With the exception of that, and if the fisherman should come on the noon train, we wish to put him on for a few words. We will rest, with the exception of these two witnesses, whom we expect to be here on the noon train. There is a possibility, but rather remote; that the fisherman will be here also.

Libelant rests.

Mr. DENMAN.—If the Court please our case will differ in what I think you will conclude are but minor details from the case made out by the pilot Moran on the “Kern.” We will show that we came around the point above, saw the “Kern” lying about eight hundred feet offshore, apparently moving downstream; that we elected to pass inside of her, on a course that would have brought us two or three hundred feet between her and the shore. We went about a thousand feet from her and signals were given by us, and she responded with a cross and different signal, which refused us permission to go through. The only maneuver we had left was a backing maneuver, and with the kind of propeller we had, that backing maneuver threw us over into her. Her whistle was a command [288] really for us to go in that direction. It was the only thing we could do. When we received this cross-whistle from her the only thing it indicated to us was that there was something lying in the way in that eight hundred feet of space. We had to assume that, because it was clear to our eyes, and we did assume, and will show from the witnesses, that the presumption was there was something in there we had to avoid. We con-

tinued on this turning course to port until we struck the other vessel in the position described. At the time we began the maneuver, about one thousand feet from the other vessel, we were well to her starboard, and heading on this course two or three hundred feet to the starboard of the "Kern" toward the Washington shore. That is the case we will show. [289]

Testimony of W. H. Patterson, for Claimant.

W. H. PATTERSON, a witness called on behalf of the claimant, being first duly sworn, testified as follows:

Direct Examination.

Questions by Mr. DENMAN:

Captain Patterson, what is your occupation?

A. I am a ship-pilot, sir.

Q. How long have you been a ship-pilot?

A. Twenty-five years.

Q. How long have you held a license as a pilot?

A. Well, I have held a license about twenty-seven or eight years.

Q. Where have you piloted during these twenty-five years? A. On the Columbia River.

Q. Do you know the steamer "George W. Elder"?

A. Yes, sir.

Q. How long have you known her?

A. Well, I have been pilot—have known the "George W. Elder" for—well, ever since she came out here.

Q. Over twenty years, isn't it? A. Yes, sir.

Q. How long have you piloted her?

(Testimony of W. H. Patterson.)

A. I have been pilot on the "Elder," off and on, for over twenty years.

Q. Familiar with her steering capacity?

A. Yes, sir.

Q. What is her maximum speed?

A. At maximum speed she makes between eleven and twelve knots.

Q. What would that be in miles? [290]

A. Well, that,—let's see, twelve knots would be about thirteen and a half miles.

Q. You think between eleven and twelve knots?

A. Yes.

Q. How does she mind her helm?

A. First class.

Q. Going at full speed?

A. Yes, sir, either way.

Q. Is she quick or slow? A. She is quick.

Q. What sort of a propeller has she?

A. It is what we call a left-hand wheel.

Q. What does that mean?

A. Well, a left-hand wheel and a right-hand wheel; a left-hand wheel backs to starboard and a right-hand wheel backs to port. Just reverse from one another.

Q. What do you mean by backing? Let me put this situation: Suppose going ahead in the water at full speed, and you reverse your propeller on the "Elder," full speed, what is the effect on the course of the "Elder"?

A. Well, she would back to starboard.

(Testimony of W. H. Patterson.)

Q. I am presuming now that she was going ahead in the water at a speed of twelve knots.

A. Yes, sir.

Q. She continues under momentum, doesn't she, when you reverse the propeller? A. Yes, sir.

Q. Now, which way will the bow turn when you reverse full speed?

A. May I use these models?

Q. Yes.

A. If we go downstream like this and are going along here, the bow would go that way.

Q. Which direction?

A. That is going to port and her stern will go to starboard that way. [291]

Q. When you say "backs to starboard" you mean the stern toward starboard?

A. And the bow to port.

Q. What course will she describe in the water under those conditions? A. How is that?

Q. She is going ahead under the momentum that is left in her from full speed, and you give full speed astern and reverse full speed; now, what course will your vessel describe as she goes through the water?

A. Well, she will keep surging ahead and swing her bow to port and stern to starboard.

Q. Curve in the water to the left? A. Yes, sir.

Q. Presuming, now, your course is downstream, you are sailing on the course, and at this point you are going full speed, the point being the point marked "X," and you then reverse your propeller full speed; show me in dotted lines what direction the "Elder" will go.

(Testimony of W. H. Patterson.)

A. This is the Washington shore and this is the Oregon shore; then she will put her stern over this way.

Q. I asked what direction would be her course through the water as you go on with your vessel; describe the course through the water.

A. Course through the water?

Q. As the vessel goes ahead from here, will she go that way? A. No, go this way.

Q. Will the course through the water curve or go straight? A. Curve off like this.

Q. As quick as this? [292]

A. Of course that is only a small scale.

Q. Now, presume that that point is a thousand feet ahead of you—the point marked “Y.” How will your vessel curve with reference to that point as you go on that course?

A. Well, she will keep overreaching all the time, but at the same time swinging this way all the time.

COURT.—Swinging to the Washington shore?

A. Swinging to the Oregon shore.

Q. Is that the direction you mean, like that?

A. Yes, like that.

Q. And your maneuver will finish, if you keep on going, at the point “Z” towards the—

A. Oregon shore.

Q. Oregon shore. Is that universally true of left-hand propellers?

A. Yes, sir, all left-hand propellers are the same.

Q. How long has the “Elder” been running up and down this stream? A. Over twenty-five years.

(Testimony of W. H. Patterson.)

Q. Always had this left-hand wheel?

A. Yes, sir, came out *for* the east built for this here special route.

Q. Always had this left-hand propeller?

A. Yes, sir.

Q. Always been known as a left-hand ship?

A. Yes, sir, always; couldn't make anything else out of her. Her engine is built that way.

Q. About what was the "Elder" drawing on that date?

A. About eighteen feet—eighteen—eighteen and a half—I forget which. It was about eighteen feet, I know.

Q. You haven't looked that up, have you, recently?
[293] A. No, sir, I didn't.

Q. Couldn't have been as much as sixteen, instead of eighteen?

A. Well, no, I am pretty sure it was that deep aft. Of course she doesn't draw that much forward.

Q. How was she laden forward?

A. How much?

Q. How deep was it forward?

A. Well, I ain't sure whether twelve or fourteen feet.

Q. There was quite a difference, though, between forward and aft?

A. Always is in them vessels.

Q. What is the reason for that?

A. Handle much better; steer much better. Of

(Testimony of W. H. Patterson.)

course if fully loaded you will of course get almost even keel.

Q. On this day there was a difference of four to six feet between the bow and stern?

A. Forty-six feet?

Q. Four to six feet.

A. Four to six feet; I think there was, yes.

Q. When you came around Cooper's Point on that night did you see this tug, the "Kern"?

A. I seen a vessel ahead, yes, sir.

Q. Which way did she appear to be going?

A. I couldn't tell. I supposed she was going downstream, after passing the other vessel going upstream.

Q. As you looked could you see any lights—side-lights? A. I couldn't see any lights at that time.

Mr. FULTON.—What is that?

A. I couldn't; no, sir.

Q. What did that indicate to you? [294]

A. That she was going downstream.

Q. What was your course as you came down after passing Cooper's Point with reference to the "Kern"?

A. My course was down the Washington shore.

Q. And how far—where was your course through the water with reference to the "Kern"?

A. Why, we aimed to keep off all the way from six to eight hundred feet there.

Q. Offshore, you mean? A. Offshore, yes.

Q. How far was your course you took that night when you saw the "Kern" lying in the water, inside

(Testimony of W. H. Patterson.)

the "Kern" or outside?

A. My course wouldn't take me probably over three or four hundred feet off the beach—off the Washington shore.

Q. Did you receive any signals from the "Kern" on that night? A. Yes, sir.

Q. How far were you from the "Kern" when you received the signal?

A. Well, I was between—when I got the signal from the—

Q. From the "Kern"? A. The "Kern"?

Q. What distance in the water?

A. Oh, I must have been fifteen hundred feet or more, anyway, from her. Yes, over that; about fifteen hundred; between twelve and fifteen hundred feet.

Q. I am now asking you when you received the first signal from the other vessel.

A. From the other vessel. Well, I was between twelve and fifteen hundred feet.

Q. Whereabouts was the other vessel then with reference to your bow? [295]

A. On my port bow.

Q. On your port bow? A. Yes, sir.

Q. By the way, as the vessel rounds Cooper's Point and turns straight upstream, where did she lie, on your port bow?

A. When we first come down by Eureka channel, through there, and come around Cooper's Point, I seen a vessel was ahead. I pulled my vessel around so I had her on my port bow about half a point.

(Testimony of W. H. Patterson.)

Q. And you continued that until you got the signal from her? A. Yes, sir.

Q. That was in response to a signal from you?

A. From me, yes.

Q. Now, what did you do then?

A. When I got this signal from the "Daniel Kern"?

Q. Yes.

A. I told the officer on the bridge to stop her; put his engines full speed astern.

Q. Was that done?

A. It was, sir, immediately.

Q. What was the effect of that maneuver on your vessel? How did it send her in the water?

A. Well, threw her stern to starboard and her bow to port.

Q. What course would it make her take through the water? A. On a swinging curve.

Q. In what direction?

A. Toward the Oregon shore.

Q. When you received this course signal from the "Kern" what did that indicate to you?

A. Well, it is either a cross-whistle or a danger-whistle. [296]

Q. What did it indicate to you?

A. Indicated to me I must stop my ship and put full speed astern to save a collision and save hitting something.

Q. What did it indicate to you with reference to the condition of the water ahead?

A. I didn't know; supposed some obstruction

(Testimony of W. H. Patterson.)

ahead. That is the reason he didn't want to let me by there; I might run into something.

Q. Did you strike the "Kern"? A. Yes, sir.

Q. Is that about a fair description of the angle which you struck? A. No, sir, I don't think it is.

Q. Well, how did you strike her?

A. We struck the "Kern" right in here. We never struck her that far ahead. According to this, you know, we would be half way up through the ship. We struck the "Kern" right in here, right in this way.

Q. At what angle?

A. Well, I should say about right angles.

COURT.—Better mark it on the model.

Mr. DENMAN.—We will bring it out later.

Q. Now, let me ask you about the handling of the "Elder," and this is entirely apart from this particular case. I want to put a theoretical case to you. Suppose, now, you are right behind the "Kern," pointing in exactly the same direction that she is pointing, straight behind her, straight astern, and you will strike her square amidships astern, if you go ahead, five hundred feet away, and you are going at full speed, [297] would you have any difficulty in clearing to starboard, presuming she is lying dead, now, in five hundred feet?

A. No, sir; wouldn't have any trouble at all.